

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

-----x
UNITED STATES, et al., : Civil Action No.:
: 1:23-cv-108
Plaintiffs, :
versus : Tuesday, September 10, 2024
: Alexandria, Virginia
GOOGLE LLC, : Day 2 a.m.
: Pages 1-164
Defendant. :
-----x

The above-entitled bench trial was heard before the
Honorable Leonie M. Brinkema, United States District Judge.
This proceeding commenced at 8:58 a.m.

A P P E A R A N C E S:

FOR THE PLAINTIFFS: GERARD MENE, ESQUIRE
OFFICE OF THE UNITED STATES ATTORNEY
2100 Jamieson Avenue
Alexandria, Virginia 22314
(703) 299-3700

JULIA TARVER WOOD, ESQUIRE
AARON TEITELBAUM, ESQUIRE
JEFFREY VERNON, ESQUIRE
KATHERINE CLEMONS, ESQUIRE
UNITED STATES DEPARTMENT OF JUSTICE
ANTITRUST DIVISION
450 Fifth Street, NW
Washington, D.C. 20530
(202) 894-4266

(State of VA) TYLER HENRY, ESQUIRE
OFFICE OF THE ATTORNEY GENERAL
OFFICE OF THE SOLICITOR GENERAL
202 North Ninth Street
Richmond, Virginia 23219
(804) 786-7704

A P P E A R A N C E S:

FOR THE PLAINTIFFS: ELLIOTT DIONISIO, ESQUIRE
(State of CA) OFFICE OF THE CALIFORNIA ATTORNEY
GENERAL
300 South Spring Street
Suite 1700
Los Angeles, California 90013
(213) 269-6681

(State of NY) MORGAN FEDER, ESQUIRE
OFFICE OF THE NEW YORK
ATTORNEY GENERAL
28 Liberty Street
20th Floor
New York, New York 10005
(212) 416-8262

FOR THE DEFENDANT: CRAIG REILLY, ESQUIRE
LAW OFFICE OF CRAIG C. REILLY
209 Madison Street
Suite 501
Alexandria, Virginia 22314
(703) 549-5354

JUSTINA SESSIONS, ESQUIRE
FRESHFIELDS BRUCKHAUS DERINGER, LLP
855 Main Street
Redwood City, California 94063
(212) 277-4000

JEANNIE RHEE, ESQUIRE
WILLIAM ISAACSON, ESQUIRE
MARTHA GOODMAN, ESQUIRE
PAUL, WEISS, RIFKIND,
WHARTON & GARRISON LLP
2001 K Street, NW
Washington, D.C. 20006
(202) 223-7300

COURT REPORTER: STEPHANIE M. AUSTIN, RPR, CRR
Official Court Reporter
United States District Court
401 Courthouse Square
Alexandria, Virginia 22314
(607) 743-1894
S.AustinReporting@gmail.com

COMPUTERIZED TRANSCRIPTION OF STENOGRAPHIC NOTES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

TABLE OF CONTENTS

WITNESSES

On behalf of the Plaintiffs:

STEPHANIE LAYSER

Direct examination by Mr. Vernon6
Cross-examination by Ms. Sessions63
Redirect examination by Mr. Vernon106
Recross examination by Ms. Sessions126

JAY FRIEDMAN

Direct examination by Ms. Clemons128

EXHIBITS

On behalf of the Plaintiffs:

Admitted

Number 75454

On behalf of the Defendant:

Admitted

Number 40469
Number 38281
Number 65587

MISCELLANY

Proceedings September 10, 20245
Certificate of Court Reporter164

P R O C E E D I N G S

THE DEPUTY CLERK: Civil Action Number
1:23-cv-108, United States of America, et al. versus Google
LLC.

Will counsel please note their appearance for the
record, first for the plaintiff.

MR. MENE: Good morning, Your Honor. Gerard Mene
with the U.S. Attorney's Office.

THE COURT: Good morning.

MS. WOOD: Good morning, Your Honor. Julia Tarver
Wood from the Department of Justice for plaintiffs.

THE COURT: Good morning.

We can shorten the instructions. The team is
here.

MS. WOOD: The team is here in its glory.

THE COURT: All right. How about the Google team?
Sorry.

MR. HENRY: Good morning, Your Honor.

THE COURT: We keep forgetting you. You should go
first next time.

MR. HENRY: I appreciate that. Thank you.

Ty Henry from the Virginia Attorney General's
Office on behalf of the plaintiffs. Your Honor, this
morning with me today I have Morgan Feder from the New York
Attorney General's Office and Elliott Dionisio from the

1 California Attorney General's Office.

2 THE COURT: Good morning.

3 MS. SESSIONS: Good morning, Your Honor.

4 Justina Sessions for Google. I'm joined at counsel table by
5 my colleagues, Jeannie Rhee, Bill Isaacson, and Craig
6 Reilly.

7 THE COURT: Good morning.

8 All right. We're going to proceed with the next
9 witness, who I believe is Ms. Layser; is that correct?

10 MS. WOOD: That is correct, Your Honor.

11 THE COURT: All right.

12 MR. VERNON: Jeff Vernon for the United States,
13 Your Honor.

14 THE COURT: Do you have books for us?

15 MR. VERNON: I believe Your Honor already has your
16 books, and I will give Google its books now.

17 THE DEPUTY CLERK: Can you raise your right hand.
18 Thereupon,

19 STEPHANIE LAYSER,
20 having been called as a witness on behalf of the plaintiffs
21 and having been first duly sworn by the Deputy Clerk, was
22 examined and testified as follows:

23 (Time noted: 9:00 a.m.)

24 THE DEPUTY CLERK: Thank you.

25 DIRECT EXAMINATION

1 BY MR. VERNON:

2 Q Good morning, Ms. Layser.

3 A Hi.

4 Q Can you state your name for the record, please.

5 A Stephanie Layser.

6 Q Let's start with your professional background.

7 You worked for the New York Post from 2010 to
8 2013?

9 A Yes.

10 Q And what did you do there?

11 A I was hired in the sales development program, and there
12 I managed our remnant inventory.

13 Q And you worked for Daily Mail from 2013 to 2014?

14 A Yes.

15 Q And what did you do at Daily Mail?

16 A At that moment in time, remnant turned into
17 programmatic, and I managed all of the programmatic
18 inventory in the U.S.

19 Q Can you give a quick description of what you did when
20 you managed Daily Mail's programmatic inventory?

21 A Yep. So programmatic is the automated buying and
22 selling of advertising. So when I managed their
23 programmatic, I worked in DFP, and I essentially helped them
24 to maximize revenue using different ad technology products.

25 Q And from about 2014 to 2017, you worked as a consultant

1 for publishers?

2 A Yes.

3 Q Can you describe some examples of some clients that you
4 had when you were a consultant?

5 A Yes. Complex Media, Meredith, Mountain News.

6 Q And about how many publishers in total did you consult
7 for?

8 A Probably between 75 and 80.

9 Q And can you describe at a high level the work that you
10 did in your consultant role?

11 A Yep. So at that moment in time, essentially a lot of
12 folks didn't have hands-on keyboard, consultants that would
13 come in and help them to learn this new technology in
14 programmatic advertising. So I helped them to maximize
15 revenue, I set up all of their different systems, I helped
16 them to do reporting and analytics, I helped them with
17 strategy. So, you know, how they should look at using these
18 pipes for selling.

19 Q And what types of ad tech systems, did you set up on
20 behalf of these publishers?

21 A Sure. SSPs, I set up header bidding, I set up, you
22 know, DFP, made sure that everything -- I set up Excel
23 spreadsheets and reporting to make sure they were analyzing
24 everything correctly.

25 Q You also worked for A+ from about 2015 to 2016?

1 A Yes.

2 Q And what did you do there?

3 A There, I ran their ad operations and programmatic. So
4 there, I built one of the first header bidding solutions
5 using Prebid.js.

6 Q Can you very quickly describe what Prebid is?

7 A Sure. Prebid is an open-source project where
8 essentially you can set up different exchanges to compete
9 against each other.

10 Q And what was your involvement in Prebid?

11 A Sure. So I was one of the first people to use the
12 technology, and then it became an organization, and after it
13 became an organization, I was on the board when I was at
14 News Corp.

15 Q Speaking of News Corp, from about 2017 to 2022, you
16 worked for News Corp?

17 A Yes.

18 Q And can you just describe at a high level what News
19 Corp's publishing business is?

20 A Sure. So News Corp is the Wall Street Journal,
21 New York Post, realtor.com. In the UK, it's The Sun and The
22 Times, and in Australia it's news.com.au, The Australian.
23 Lots of other local properties.

24 Q What work did you do for News Corp?

25 A Sure. I ran data identity and ad tech there. I

1 functioned as an internal consultant to all of our different
2 business units. I would look at their ad stacks, I would
3 pick good things that they were doing, interesting things
4 that they were doing. Different ways in which we could
5 combine -- we could take learnings from one case and use it
6 to make things better for the company as a whole.

7 Q Okay. And in 2022, you started working for Amazon?

8 A Yes.

9 Q What do you do for Amazon?

10 A I work at Amazon Web Services, and I am the subject
11 matter expert and publisher ad tech. So I work with, like,
12 high-volume low-latency workloads. It's SSPs, DSPs, ad
13 exchanges, and also publisher ad tech, so ...

14 Q And what is Amazon Web Services?

15 A It is the cloud computing arm of Amazon.

16 Q And what services does Amazon web services provide to
17 ad tech companies?

18 A Servers, networking, databases.

19 Q Do you work for the Amazon business unit that operates
20 Amazon's ad tech products?

21 A No.

22 Q In total, how many years of experience do you have
23 working on behalf of publishers in the ad tech industry?

24 A Fourteen years.

25 Q When you were working at the New York Post, which

1 publisher ad server did the New York Post use?

2 A DFP.

3 Q When you were working at News Corp, which publisher ad
4 server did News Corp use?

5 A DFP.

6 Q And across the approximately 75 to 80 publishers that
7 you consulted for, how many of those used DFP as their ad
8 server?

9 A All of them but one.

10 Q How much time have you personally spent working within
11 DFP?

12 A Like, a lot of time. So at the beginning of my career,
13 I would work in DFP all day long. And then towards the end
14 of my career, it was last. But even towards the end of the
15 time at News Corp, it was probably an hour per day.

16 Q Let's start with publishers' ability to switch away
17 from Google's DFP.

18 When you were at News Corp, did you ever evaluate
19 whether News Corp could switch from DFP to another ad
20 server?

21 A Yes.

22 Q Can you just -- when did you do that evaluation?

23 A In 2017.

24 Q And what work did you do to evaluate that?

25 A Sure. So we did a project where we evaluated a few

1 different criteria including service level and pricing
2 revenue risk.

3 Q And what was your involvement in this News Corp
4 evaluation of whether to switch ad servers?

5 A I did technical due diligence and revenue risk.

6 Q And about how long did this work take?

7 A About six months.

8 Q And about how much time did you spend on this work?

9 A The better part of -- like, I would say probably
10 50 percent of my week was working on this.

11 Q And at a high level, what was your conclusion about
12 whether News Corp could switch ad servers?

13 A That the revenue risk was too high for us to switch ad
14 servers.

15 Q And by "revenue risk," what are you referring to?

16 A I'm referring to Google Ads demand.

17 Q Why were you concerned that switching away from DFP
18 would create a revenue risk with respect to Google Ads
19 demand?

20 A Sure. Some of the Google Ads demand is exclusive to
21 AdX, and we felt as though that revenue was at risk for us
22 and that there was a good chance we would lose access to it.

23 Q Why did you think that revenue would have been at risk?

24 A Because inside of DFP, there is real-time pricing. AdX
25 inserts real-time pricing. Whereas when you go outside of

1 DFP, it's either a yes or a no. You offer an ad to Google,
2 and they either take it or they don't.

3 Q And can you just explain that? I think you said within
4 DFP, AdX offers you real-time price.

5 Can you explain what you meant by that?

6 A Sure. So inside of DFP -- essentially AdX is
7 integrated inside the ad server in such a way that it can
8 insert a real-time price. So it looks at the other line
9 items, and if it can beat the line item, it takes the
10 impression.

11 Q And I think you said if you're not using DFP, you just
12 get a yes or a no?

13 A Yes.

14 Q And can you explain what you meant by that?

15 A Yeah. So in other exchanges, you can offer them an
16 impression and they send a bid to you and you can make a
17 decision. But, in AdX, if you ask it -- like if you ask it,
18 it doesn't send a price out.

19 Q At the time, what percentage of News Corp's
20 programmatic revenue came from AdX?

21 A At that moment in time when we did the evaluation, it
22 was between 40 and 60 percent.

23 Q And what percentage at the time of News Corp's
24 programmatic revenue came from Google Ads?

25 A I can't do the percentage of exactly that, but I can

1 tell you that, of AdX demand, between 40 and 60 percent of
2 that was Google Ads demand.

3 Q Are you familiar with the phrase "unique demand"?

4 A Yes.

5 Q What does that mean in the context of programmatic
6 displaying?

7 A So you want to maximize the amount of unique demand you
8 can get across the industry because that helps you maximize
9 revenue.

10 Q How does access to unique demand help a publisher
11 maximize revenue?

12 A It competes against each other.

13 Q And what is the largest source of unique demand within
14 programmatic display?

15 A Google Ads.

16 MS. SESSIONS: Objection. Foundation.

17 THE COURT: Oh, I think she's laid a foundation.
18 Overruled.

19 BY MR. VERNON:

20 Q I'm sorry. Can you repeat your answer?

21 A Google Ads.

22 Q How would losing access to AdX affect News Corp?

23 A We would lose money.

24 Q And practically how would losing that money from access
25 affect News Corp?

1 A Less journalists, less innovation, less money towards
2 all of our products and services.

3 Q At this time when you were making this evaluation, did
4 you evaluate whether there were other ways that News Corp
5 could get at least some access to AdX without using DFP?

6 A Yes.

7 Q And, at a high level, what did you conclude?

8 A At a high level, we concluded that we would have to use
9 two separate ad servers, and that would be very -- from like
10 a reporting perspective, it would be really difficult to
11 manage like from an operational perspective.

12 And then we also concluded that Google would still
13 retain their last look advantage if we went to this system.

14 THE COURT: Can you explain in more detail why you
15 would need two separate servers?

16 THE WITNESS: Yeah. Because you wouldn't be able
17 to get the real-time price, you would have to feed in
18 pricing from another system into Google's system because
19 they say yes or no. Right. So when you push that in, they
20 would get the final choice on whether or not they wanted an
21 impression.

22 THE COURT: And you need two servers for that?

23 THE WITNESS: Yeah, because you can't pull AdX out
24 of DFP; they're together.

25 THE COURT: Okay.

1 BY MR. VERNON:

2 Q Let me see if I can break it down slightly.

3 In this two-ad-server system, which of the ad
4 servers would give News Corp access to AdX?

5 A DFP.

6 Q And then for the other -- what would the other ad
7 server have been?

8 A The other ad server would have been -- it was AppNexus
9 at the time, but it's called Xandr now.

10 Q And then what would you use the Xandr ad server within
11 this two-ad-server system to access?

12 A So you would put your direct ad campaigns in it. You
13 would also put all of your other -- you would put your
14 header bidding line items in it, and then you would run
15 header bidding, and you would push the price into DFP.

16 Q And I think a minute ago you were discussing some of
17 the issues that you thought would result from this system,
18 the first one you mentioned was reporting.

19 Can you just explain what you meant by that?

20 A Sure. So then you have two separate systems that are
21 functioning from an ad server perspective, and downstream,
22 you have order management systems, you have reporting, you
23 have financials, you have billing, you have all of the
24 things that make your business tick, and they really need
25 like one source of truth for you to pull that data out of,

1 and you would bifurcate it into two separate systems.

2 Q And in the context of an ad server, what is
3 forecasting?

4 A So forecasting is like when you run a direct ad
5 campaign, you can go into forecasting, and you can decide
6 how much availability or how much inventory you have.

7 Q And how would this two-ad-server system affect
8 forecasting?

9 A Forecasting would be off. It would be -- I don't know
10 exactly how you would be able to do it in a way that was
11 seamless, and also you would have to train an entire
12 operational -- like an operations team to do it in two
13 different systems.

14 Q In the context of ad servers, what does a latency mean?

15 A Oh, yeah. Latency is when you can lose ads. So
16 between all of the ad decisioning, latency is the time that
17 it takes you to actually make a decision. And in that time,
18 oftentimes you can drop an ad because it takes websites a
19 certain amount of time to load.

20 Q And how would using the two-ad-server system affect
21 latency?

22 A So because you would have to do some ad decisioning in
23 the ad server and then you would have to push it over into a
24 secondary ad server, you would have like a discrepancy
25 between -- like a loss of those impressions from moving from

1 one system to another.

2 Q And how would the loss of impressions affect News Corp?

3 A Revenue loss.

4 Q Under the dual -- the two-ad-server system, would News
5 Corp be able to stop using DFP?

6 A No.

7 Q And I think you mentioned that the two-ad-server system
8 would give AdX a last look?

9 A Yes.

10 Q What did you mean by that?

11 A So that means that you would have all of your other
12 exchanges compete, and then you would ask Google if they
13 want it, and they would get the advantage of saying yes or
14 no, and they could pay one penny above if they wanted that
15 particular impression.

16 Q And what effect would this last look from the
17 two-ad-server system have on News Corp?

18 A So it doesn't add any what we call incremental revenue
19 value, so it essentially doesn't give very much additional
20 revenue to us.

21 Q And what do you mean by that?

22 A Because the other exchanges are paying a -- have
23 already volunteered and then it was given to Google to pay.
24 One pay left, it's not a lot of extra additional revenue.

25 Q Okay. And let me go back to the yes/no versus

1 real-time price issue and just make sure I understand it.

2 When DFP requests a bid from AdX, how does AdX
3 respond?

4 A So when DFP requests a bid from AdX, it's AdX reads all
5 of the different orders that are in the system and the
6 prices of those orders, and if it can beat it, it takes it.

7 Q And when DFP connects to AdX, does AdX respond with a
8 real-time price?

9 A Yes.

10 Q And how does that differ from what happens when AdX
11 connects to another ad server?

12 A You don't get a real-time price.

13 Q And what do you get instead?

14 A You get a yes or a no.

15 Q Okay. And the yes or no refers to?

16 A Whether they want the impression or not.

17 Q Looking across all of the -- and what practical
18 consequences result from only getting a yes/no as opposed to
19 a real-time price?

20 A So programmatic advertising changed everything into a
21 decision being made in real time. And so for a company like
22 The Wall Street Journal who's making decisions about how
23 their product loads, that real-time decisioning helps you to
24 make -- helps you to make those decisions. So I'll give you
25 like a practical example.

1 We had a paywall, and the paywall had 60 different
2 variables that were put into it to make a decision on
3 whether we opened the paywall or whether we kept the paywall
4 closed. And one of the things we really wanted to do was
5 say this, you know, particular user has a high advertising
6 or a low advertising value, and if they have a high
7 advertising value and they have a low propensity to
8 subscribe, you would want to open the paywall and get the
9 advertising and get the money that you get from it. But
10 with DFP, because you can't get a real-time price out of it,
11 it meant -- it really stifled any sort of innovation that we
12 could have at that moment in time.

13 Q Let me pause on this.

14 First, can you explain what this paywall idea that
15 you had was?

16 A Yeah. So, today, publishers are like -- we have to
17 maintain consumer attention, we have to deliver out these
18 personalized product experiences, and if you don't have all
19 of the data to be able to decision on those in real time, it
20 makes it very difficult for you to manage the -- like, what
21 the product looks like and feels like for a consumer. And
22 so you also need to be able to maximize revenue. And
23 publishers have more revenue streams than just advertising,
24 they have subscriptions, they have lead generation, they
25 have all of those kind of things. So when you're trying to

1 maximize revenue and decide how you do that per user, if you
2 don't get real-time pricing, then it makes it hard for you
3 to continue to innovate against all of the other media
4 companies that are out there.

5 Q And just really kind of simply and practically, what
6 did you want to do with this paywall that you were not able
7 to do?

8 A I wanted to use like the value of advertising to either
9 open the paywall or close the paywall.

10 Q And how did DFP affect your ability to do that?

11 A We couldn't continue to innovate in the ways that we
12 wanted.

13 Q Looking across all of the publishers that you have
14 either worked for or consulted for, how many of them used
15 DFP as their ad server?

16 A So other than the -- like, if I think about all of the
17 publishers that -- whose ad stacks I've seen or even people
18 I've just talked to, I think of off the top of my head maybe
19 three publishers out of hundreds that don't use DFP.

20 Q Do you think that any of the publishers that you either
21 worked for personally or consulted for realistically could
22 have switched from DFP to another ad server?

23 A Not without revenue risk.

24 Q And why do you say that?

25 A Because Google Ads demand was such a large share of

1 their ...

2 Q Did you use DFP at all of your various publishers
3 because you thought it was innovative?

4 A No. DFP is a 25- to 30-year-old piece of technology.
5 It's slow and clunky.

6 Q What do you mean it's an older technology that's slow
7 and clunky?

8 A It takes a long time to load on the page.

9 Q How would you describe DFP's position in the display of
10 publisher ad server business?

11 A Dominant.

12 Q And why do you say that DFP is dominant?

13 A Because everybody uses it. There are entire legions of
14 people in ad operations that have never used a different
15 system in their entire careers.

16 Q And why do you believe --

17 A Including me.

18 Q Why do you believe that DFP is the dominant ad server?

19 A I believe it's because AdX is tied to DFP.

20 Q And what do you mean when you say AdX is tied to DFP?

21 A I mean that you can get real-time bids into DFP from
22 AdX, but you can't reverse it and do it in a different ad
23 server.

24 Q Let's turn back to your comparison of the two ad
25 servers that you were evaluating, which were DFP on the one

1 hand, and we'll call it Xandr, also known as AppNexus, but
2 Xandr, on the other hand.

3 A Okay.

4 Q How did these two compare in terms of features?

5 A The feature set was -- well, the feature set was
6 actually better at AppNexus because we were going to get
7 access to our log-level data.

8 Q Were there some other ways in which Google had better
9 features?

10 A No.

11 Q How did Xandr and DFP compare with respect to service
12 levels?

13 A So service levels at DFP at that moment in time were
14 better, and it was like in the, like, year or two leading up
15 to this project, we were starting to see some hope, like
16 maybe they would listen to us. And then, at that time, we
17 were doing -- with AppNexus, we were -- oh, sorry, Xandr.
18 With Xandr, we were doing a project -- a header bidding
19 project with them, and it wasn't going quite as well, so we
20 were thinking that their service levels -- they might not be
21 developed enough to service a publisher of our size.

22 Q Based on what you knew as of the time you left News
23 Corp, how did Xandr's and Google's DFP's service levels
24 compare at that time?

25 A When I left? So I'm not aware of AppNexus or Xandr's

1 service level in terms of their ad server because I didn't
2 use them. But the DFP AdX service level was not great. It
3 was fine.

4 THE COURT: I'm sorry, what was the answer?

5 THE WITNESS: It was fine. It was -- we would ask
6 for feature requests, we would ask for different -- like for
7 different product functionality, we would ask for things, we
8 never got it. We would request -- it just always felt like
9 stuff would land on deaf ears.

10 THE COURT: So they were not responding?

11 THE WITNESS: No. And even if they said yeah, you
12 know, we understand, nothing ever changed.

13 BY MR. VERNON:

14 Q And can you give an example of that -- a situation
15 where you requested something and nothing changed?

16 A Yeah. So I really wanted access to my log-level data
17 because what that means is -- your log-level data is the
18 output of the system so it tells you exactly what was
19 happening, and you can put it in a database, and you can use
20 it to integrate it into your other systems.

21 And so there's two different files, there's a --
22 there's the ad server system, DFP; and then there's the
23 exchange system, AdX. And originally you were able to tie
24 those two different -- those two different logs together
25 using some of the different columns. And what happened was

1 you couldn't get access to Google Ads, bids, in AdX. So the
2 overall logs were, like, incomplete. Forty to 60 percent of
3 them didn't exist. And so if you were to try to write a
4 machine learning algorithm on this data set or you were
5 going to, like, try to use that, you couldn't. And it
6 wouldn't make -- like, it wouldn't make any sense, the
7 outputs wouldn't make any sense.

8 So I begged Google. I was like, I really want
9 access to this log-level data, it's going to help me make
10 better decisions, it's going to help me set better pricing.
11 And they were like, all right. Finally, after two years of
12 begging, they said, okay, we're going to give you access to
13 your Google Ads demand. And I was like over the moon
14 because I finally was going to get access to this data set,
15 and it was going to help our business.

16 And then right before it was time for them to open
17 it, they broke the -- basically the keys that moved these
18 two -- like, these two data sets together. So they
19 basically obfuscated some of the data sets so I couldn't
20 take my impression level data and my AdX data and merge them
21 together.

22 So in my quest to get this, like, 360-degree view
23 of what was happening in a system that I was using to manage
24 my business, I couldn't get that.

25 Q Did you ever tell Google that you wanted them to not

1 break the two sets of data apart?

2 A All the time. I told them, like, so many times.

3 Q And what, if anything, did Google say in response?

4 A They told me it was advertiser privacy.

5 Q Did Google ever fix the problem that you identified?

6 A No.

7 Q What did you learn when you were looking at Xandr's ad
8 server about how Xandr would have handled this log-level
9 data issue?

10 A I would have just gotten my log-level data. Full
11 transparency.

12 Q And so why did News Corp continue to use DFP, even
13 though Google would not give you this data and Xandr would
14 have?

15 A Google Ads demand.

16 Q What do you mean by that?

17 A Being able to ensure that we got access to the unique
18 demand from Google.

19 Q Let me step back slightly and ask you about
20 negotiations between News Corp on the one hand, and on the
21 other hand, Google or other exchanges.

22 What was your involvement in those negotiations?

23 A I would do technical due diligence and ask for specific
24 product features.

25 Q And can you give an example of one of those features

1 that you requested?

2 A Access to log-level data.

3 Q Log-level data.

4 How would you compare negotiating with Google to
5 negotiating with the other exchanges?

6 A It's impossible to negotiate with Google. So we would
7 red line our contracts, and we would send it back to them,
8 and I'd have my requests, and they would accept little to
9 none of it.

10 Q And how did that compare to the process of negotiating
11 with the other exchanges?

12 A A lot easier to negotiate with other exchanges.

13 Q And why is that?

14 A Because they all had to compete against each other in
15 header bidding and in our ad server.

16 Q All right. So let me turn back briefly to the
17 comparison of Xandr and DFP.

18 And I think you mentioned before that, at least at
19 the time, you had some concerns about the service levels of
20 Xandr; do you remember that?

21 A Yes.

22 Q If loss of revenue from AdX were not an issue, which of
23 the two ad servers would you have recommended?

24 A AppNexus. Xandr. Xandr.

25 THE COURT: I'm sorry. What was the answer?

1 THE WITNESS: Xandr.

2 BY MR. VERNON:

3 Q And why would your concerns with Xandr's service levels
4 not stop you from recommending Xandr?

5 A Because you can always hire more people. Right. You
6 can always hire better -- people with better expertise and
7 up the service level. At their core, they wanted to give us
8 a good product, and so I felt as though that could be
9 changed. Service levels go in and out with any ad tech
10 company.

11 Q Let's talk about the other costs to switching ad
12 servers.

13 Other than the loss of revenue from AdX, which we
14 discussed, what other costs would be involved in switching
15 publisher ad servers?

16 A Yeah. So there would be switching costs, so you would
17 have to move from one ad -- like, you would have to move ad
18 campaigns from one ad server to the other. You would also
19 need to, like, take kind of time from all of your different
20 teams who are implementing the new ad server to make sure
21 that things were set up correctly, to launching things.
22 There's risk that's associated with moving from one ad
23 server to another.

24 Additionally, there's change management in terms
25 of your personnel. So, like I mentioned before, there are

1 entire legions of people who have only ever used DFP in
2 their life, and so, you know, it was going to be hard to
3 tell somebody you need to go learn a new system.

4 Q In the context of an ad server, what is order
5 management?

6 A Order management, like an order management system, is
7 where you, like, book your ad campaigns, and then you push
8 it into your ad server.

9 Q How would switching ad servers affect this order
10 management process?

11 A You would have to redo the integration between the
12 order management system and the ad server, and that could
13 affect reconciliation and billing.

14 Q And I think you mentioned that one of the challenges
15 associated with switching ad servers was finding personnel
16 familiar with an ad server other than Google's DFP?

17 A Yes.

18 Q Why is that a challenge?

19 A Because, as I mentioned before, most publishers use
20 DFP.

21 Q Let's focus on whether there are other potential
22 alternatives to DFP.

23 Have you ever evaluated whether News Corp could
24 build its own ad server?

25 A No.

1 Q Do you have a high-level take on whether you think News
2 Corp could build its own ad server or not?

3 MS. SESSIONS: Objection, Your Honor. Foundation.
4 She just said she hadn't evaluated that.

5 THE COURT: Sustained.

6 MR. VERNON: I'll move on.

7 BY MR. VERNON:

8 Q What is Taboola?

9 A Taboola is a -- it's content recommendation. They pay
10 you. It's --

11 THE COURT: I'm sorry. What was the answer?

12 THE WITNESS: It's content recommendation. So at
13 the bottom of a website when you look after reading the
14 article, there's typically those little articles, and when
15 you click on it, they get paid.

16 THE COURT: You've got to keep your voice up.

17 THE WITNESS: Sorry. Okay.

18 THE COURT: All right.

19 BY MR. VERNON:

20 Q To what extent do you view Taboola as a viable
21 alternative to DFP?

22 A Taboola is not an ad server, a full-featured publisher
23 ad server.

24 Q And so -- understood.

25 When you say it's not an ad server, what do you

1 mean?

2 A You wouldn't be able to put your direct ad campaigns in
3 it and use it like you would use DFP or AppNexus. Or Xandr.
4 Xandr. Sorry.

5 Q What differences are there between Taboola, on the one
6 hand, and an ad server like DFP on the other?

7 A Taboola is a specific use case. It's a specific use
8 case for publishers that monetizes at the bottom of your
9 page. It's not a full-featured ad server where you would be
10 able to manage all of your ad inventory.

11 Q So earlier we've talked about some exchanges.

12 Can you just list some examples of exchanges other
13 than AdX?

14 A Yep. So there's Rubicon, or it's called Magnite now.
15 It changed names. Index Exchange, PubMatic, Sonobi.

16 Q Let's take Rubicon, Index and PubMatic.

17 Focusing on those three exchanges, which of those
18 would be a viable alternative to Google's DFP?

19 A None of them.

20 Q And why are those exchanges not a viable alternative to
21 DFP?

22 A They're not a full-featured publisher ad server.

23 Q Let me ask you about another product.

24 Are you familiar with FreeWheel?

25 A Yes.

1 Q What does FreeWheel focus on?

2 A Video. Video inventory. So most broadcasters use
3 FreeWheel.

4 Q How viable of an option would it be from News Corp to
5 switch from DFP to FreeWheel?

6 A Not viable.

7 Q Why do you say it would not be viable?

8 A Well, you would lose access to Google Ads demand. And
9 then it's also built for video.

10 Q And what do you mean it's built for video?

11 A It's built for video ad creatives. So ads that show up
12 there are video ads, not ads that are display ads.

13 Q Why could News Corp not just shift its impressions from
14 display to video and then use FreeWheel instead of DFP?

15 A Because that's not how people consume Wall Street
16 Journal content; they read articles on the Wall Street
17 Journal.

18 Q And are you familiar with AppLovin?

19 A Yes.

20 Q What is AppLovin?

21 A AppLovin is a mobile SSP ad server.

22 Q Is AppLovin's mobile ad server a good alternative to
23 DFP?

24 A No.

25 Q Why not?

1 A Because you would lose access to Google Ads demand,
2 and, additionally, it's made for mobile applications.

3 Q And why can News Corp not just shift its impressions
4 from display to app and then use AppLovin instead of DFP?

5 A Because most people read the Wall Street Journal,
6 New York Post, realtor.com on mobile web, not on mobile
7 application.

8 Q Are you familiar with the website Facebook?

9 A Yes.

10 Q Can a publisher switch from DFP to Facebook?

11 A No.

12 Q Why not?

13 A I don't think Facebook -- Facebook doesn't have a
14 publisher ad server. Facebook doesn't even have any sort of
15 publisher-facing tools.

16 Q Are you familiar with TikTok?

17 A Yes.

18 Q Can a publisher switch from DFP to TikTok?

19 A No.

20 Q Why not?

21 A Because it doesn't have a publisher ad server.

22 Q To your knowledge, did Facebook or TikTok do anything
23 to help publishers sell open-web display ads?

24 A No.

25 Q To your knowledge, did Facebook or TikTok play any role

1 in allowing publishers to sell ads on their websites?

2 A No.

3 Q Let me ask you a little bit on direct deals. And to
4 avoid repetition, I won't ask you what a direct deal is.

5 Let me start with, what work does News Corp do to
6 set up a direct deal?

7 A So you have to have a sales team, you have to have an
8 ad operations team, you have to have reporting. It's what
9 we called hand-sold. So you have a lot of folks that are
10 helping make those ad campaigns successful for your
11 customers.

12 Q And in the context of display advertising, what is Open
13 Auction?

14 A Open Auction is typically real-time bidding, and it is
15 a different type of ad product.

16 Q Why do you say that Open Auction is a different type of
17 ad product? And different to what?

18 A Yeah. So the KPIs, or the key performance indicators
19 that marketers look at for Open Auction are different than
20 what they look at for direct.

21 So, for direct, for someone like the New York
22 Post, they might sell something to Dunkin' Donuts to have
23 their, like, new pumpkin spice drink or whatever. And
24 they'll take over all the ads in the sports section, so if
25 you read a piece of sports content, you see it. And it's

1 branding; it's associating sports and New York Post with
2 Dunkin' Donuts. Right. But mostly Open Auction is direct
3 response. So people want the click, they want to move
4 goods, they actually want a response in the ads that they
5 run.

6 Q I think you described two different terms: Direct
7 response and branding.

8 Can you just very briefly explain the difference
9 between those two things?

10 A Sure. So direct response -- if you look at marketing,
11 there's, like, top of the funnel versus bottom of the
12 funnel. Bottom of the funnel is when you actually get to,
13 like, elicit, like, and measure selling goods. Top of the
14 funnel is when you get -- you're, like, in somebody's, like,
15 brain to try and land a little marketing message and say to
16 them, hey, you should consider buying this.

17 Q And for direct deals, which of the two do direct deals
18 focus on between direct response and branding?

19 A Branding. And it's about building brand loyalty.
20 That's what branding is.

21 Q And for Open Auction, which of the two, between direct
22 response and branding, does Open Auction focus on?

23 A Direct response. Direct response and Open Auction go
24 together.

25 Q And how do the prices compare for direct on the one

1 hand and Open Auction on the other hand?

2 A You make a lot more money from direct than you do from
3 programmatic.

4 Q How easy or difficult would it be for News Corp to
5 shift impressions from Open Auction to direct deals?

6 A We sell as much directly as we possibly could. Right.
7 So as much money as you can move into brand dollars, you
8 want to move into brand dollars because you make more money
9 for it. Open Auction is something that you do to make money
10 with the additional ads that you have left over.

11 Q Just in a ballpark level, what percentage of News
12 Corp's impressions does it sell through Open Auction?

13 A It depends on which business unit you're looking at.
14 If you look at Wall Street Journal, they sell much more
15 directly because they have a big B2B business. And it's one
16 of the only places you can get CEOs and you can get hedge
17 fund managers and things like that. From -- so they sell a
18 lot more directly. They typically sell between 50 and
19 60 percent of their impressions at any given time directly.
20 If you look at the New York Post or realtor.com, they sell
21 between 5 and 10 percent directly. And then the rest would
22 be open exchange.

23 Q And so why does News Corp not sell more impressions
24 through direct than what you just described?

25 A Because they've, like, tested the market, and they're

1 selling as much as they can directly, and the rest you
2 manage with Open Auction.

3 Q So I think you mentioned that News Corp is already
4 selling as much directly as is possible.

5 How does that affect whether News Corp could or
6 could not shift impressions from Open Auction to direct?

7 A It's just not -- it's not possible.

8 Q Why do you say it's not possible?

9 A Because we're doing it as much as we can.

10 Q Are you familiar with the phrase "take rate" as it
11 applies to exchanges?

12 A Yes.

13 Q And just quickly, what does take rate mean?

14 A So it's the percentage that they take.

15 Q Is it somewhat equivalent to the price that the ad
16 exchange charges?

17 A Yes.

18 Q If exchanges' take rates were to increase by
19 10 percent, would News Corp shift impressions from Open
20 Auction to direct deals?

21 A No. You can't just shift impressions to direct deals.

22 Q And why do you say that you can't just shift
23 impressions to direct deals?

24 A Because it's -- you know, like I said, we sell as much
25 as we can directly, and then the rest goes to Open Auction.

1 Also, you've tested the market, and you've seen how much you
2 can sell directly, and the market bears as much as you can
3 sell directly.

4 Q In your view working at a publisher, do you view direct
5 deals as a substitute for Open Auction or a complement?

6 A A complement.

7 Q And why is that?

8 A Because they fit two different pieces of, like,
9 advertisers, KPIs, or their key performance indicators. So
10 you can -- you sell them two different types of ad products.

11 Q And why do you say they're two different types of ad
12 products?

13 A Because one is for branding, and one is for direct
14 response.

15 Q Are you familiar with the phrase "programmatic
16 guaranteed"?

17 A Yes.

18 Q What is that?

19 A So programmatic guaranteed is -- it's like direct, but
20 some of the operational aspects of it exist on the buy-side
21 rather than the publisher's side. So they set up the ad
22 campaigns on the buy-side, and that connects directly to
23 your system.

24 Q And do you view programmatic guaranteed as more like
25 direct or more like Open Auction?

1 A It's more like direct.

2 Q What differences are there between Open Auction and
3 programmatic guaranteed?

4 A The same differences that exist between direct and Open
5 Auction exist between programmatic guaranteed and Open
6 Auction.

7 Q How easy or difficult would it be for News Corp to
8 shift impressions from Open Auction to programmatic
9 guaranteed?

10 A It would be difficult.

11 Q If exchanges' take rates were to increase by
12 10 percent, would News Corp shift impressions from Open
13 Auction to programmatic guaranteed?

14 A No.

15 Q Do you view programmatic guaranteed as a substitute to
16 Open Auction or a complement?

17 A Complement.

18 Q Let's switch gears slightly and talk about first look.

19 A Okay.

20 Q When DFP is the ad server, which exchange bids first
21 within the remnant waterfall?

22 A So AdX can look at the other line items and the price
23 that's associated with the other lines, and it can choose
24 whether or not it wants an impression above those. So,
25 technically, AdX gets first look.

1 Q And is the phrase "remnant waterfall" sometimes also
2 referred to as remnant line items or network line items?

3 A Yes.

4 Q Why did you say that AdX technically gets the first
5 look within the remnant waterfall or remnant line items?

6 A Because AdX reads the line items. It sees the price in
7 which the publisher puts inside the line items, and then
8 Google can choose whether or not it wants to buy above that
9 price. If it does not want to buy above that price, it
10 would go to the exchanges.

11 Q And can you just explain what a line item is?

12 A Sure. So inside of DFP, a line item is what you book
13 an ad campaign in. You book it in an order, and then the
14 line items are when you actually point it to the inventory
15 to tell it to buy.

16 Q What is a static bid?

17 A A static bid is, you know -- so we would say that the
18 price that you put into the line item is static because it's
19 not indicative of the amount that the exchange would
20 actually pay. So an AdX exchange runs -- it runs an
21 auction, the auction delivers a price, and then they pay
22 that price. But in DFP, when we book things as a waterfall,
23 it stayed static, which means, you know, it was \$3, even
24 though when you ran the auction and it could have been 6, it
25 could have been 2.

1 Q And just to make sure I'm clear, these line items, did
2 they exist within DFP?

3 A Yes.

4 Q And the line items that are not AdX, are those based on
5 static bids or real-time bids?

6 A Static bids.

7 Q And then when AdX is called, does AdX submit a
8 real-time bid or a static bid?

9 A A real-time bid. I just want to clarify that this is
10 pre header bidding.

11 Q Right. Yes.

12 A Okay.

13 Q Pre header bidding.

14 And when AdX is called within DFP, AdX's floor is
15 based on the highest other static bid associated with those
16 other exchanges; is that correct?

17 A Yes.

18 Q And then if AdX has a real-time bid that is higher than
19 the floor, what happens?

20 A It can typically pay as little as a penny above and
21 take the impression.

22 Q And in that situation, do any of the other exchanges
23 get the chance to bid?

24 A No.

25 Q And as far as you are aware, was there any way within

1 DFP to put another exchange ahead of AdX within the remnant
2 waterfall?

3 A No.

4 MR. VERNON: Can we turn to Plaintiffs'
5 Demonstrative G. I apologize, it's actually not in the
6 binder, but it is on the screen.

7 BY MR. VERNON:

8 Q So let's look at Plaintiffs' Demonstrative G.

9 Does this show the remnant waterfall that we've
10 been discussing?

11 A Yes.

12 Q And --

13 A Yes.

14 Q And this would be before header bidding?

15 A This is before header bidding.

16 Q And which exchange is bidding first here?

17 A AdX.

18 Q And as far as you were aware, was there any way to put,
19 as an example, Magnite, which is in the fourth position,
20 ahead of AdX within the remnant waterfall?

21 A No.

22 Q Why not?

23 A Because DFP would read that line item for Magnite as
24 \$1.25, and then Google could choose whether or not to pay
25 \$1.26 and take the impression.

1 Q And one last question just to make sure I understand
2 what a static bid is.

3 How are static bids determined?

4 A The publisher would put them into the line item. It
5 was typically an average.

6 Q Average based on what?

7 A Historical behavior of the ad exchanges.

8 Q Okay. If you had the ability to put another exchange
9 ahead of AdX within this remnant waterfall, what would you
10 have done?

11 A I would have had to move them out of the remnant line
12 items. I would have had to move them into sponsorship.

13 Q If you had the ability to put another exchange ahead of
14 AdX within the remnant waterfall when you were working at
15 your publisher at the time before header bidding --

16 A Yeah.

17 Q -- what would you have done with that ability?

18 A So I may have -- like, when you negotiate with these,
19 you can negotiate different take rates, and I may have put
20 somebody who has a lower -- like, who has a lower take rate
21 above AdX.

22 Q Was it an -- which publisher are you referring to here
23 when you're talking about this?

24 A This looks more like what my ad stack looked like at
25 The Daily Mail.

1 Q Was the fact that you could not put another exchange
2 ahead of AdX within this remnant waterfall good for Daily
3 Mail at the time?

4 A No.

5 Q Why not?

6 A Because they didn't add very much incremental revenue.
7 They would eventually get to the point where they would see
8 the line items and they would, like, get used to the static
9 bids, and they'd just kind of pound on top of the static
10 bids. So if you were putting in \$1.25, they would pay
11 \$1.26. So it was kind of a game to try and, like, make sure
12 that Google didn't get used to where your different -- like,
13 your different floors were for your different partners.

14 Q Let's move -- I think we can set this aside. Let's
15 move forward slightly and talk about header bidding. And,
16 again, I won't ask you what header bidding was.

17 But can you explain how you were involved in the
18 creation of header bidding?

19 A Yes. So I had always wanted to get all of our
20 exchanges competing on a head-to-head basis. And when I was
21 at The Daily Mail, I asked Google if they could build it
22 into their ad server as a feature request, and they told me
23 that it wasn't technically possible.

24 MS. SESSIONS: Objection, Your Honor. Hearsay.

25 THE COURT: Sustained.

1 BY MR. VERNON:

2 Q Let me back up.

3 Are you familiar with the phrase real-time
4 competition?

5 A Real-time competition, yes.

6 Q What does it mean?

7 A It means getting all your exchanges to compete on a
8 head-to-head basis for real-time competition so that they
9 could compete in real time.

10 Q Prior to header bidding, was there any way to create
11 real-time competition for AdX?

12 A No.

13 Q And how did that impact the publishers that you were
14 working for at the time?

15 A We knew that there was an opportunity to make more
16 revenue.

17 Q Okay. And so then why did you want to create -- why
18 did you want to help create header bidding?

19 A To maximize revenue for publishers.

20 Q Are you familiar with the concept of transparency as it
21 applies to auctions?

22 A Yes.

23 Q What effect, if any, did header bidding have on the
24 transparency of auctions?

25 A We got full transparency into the logs of everything

1 that happened inside header bidding. And we also could use
2 that decisioning in real time, because header bidding would
3 run the auction, you would get the CPM from it, and then you
4 could use that in things like the dynamic paywall that I
5 talked about before.

6 Q In your experience, how did header bidding compare to
7 Google's DFP in terms of auction transparency?

8 A It was way better.

9 Q Which was way better?

10 A Header bidding was way better in terms of transparency.

11 Q And what did you observe -- how many times did you
12 implement header bidding when you were working for or
13 consulting for a publisher?

14 A Probably 25 times.

15 Q And when you implemented header bidding for these 25
16 publishers, approximately, what did you observe about the
17 effect on revenue that came from header bidding?

18 A Significantly more revenue. So the first publisher I
19 implemented it in, we made 40 percent more revenue.
20 Subsequent publishers, it was always somewhere between 20 to
21 50 percent more revenue.

22 Q Did header bidding have any drawbacks in this early
23 time period?

24 A Yes.

25 Q And can you just briefly describe what those were?

1 A Sure. So if you implemented too many partners into
2 header bidding, because the code was on the website's page,
3 it would slow down the page. And so we oftentimes suggested
4 to limit the amount of people that you implemented into
5 header bidding.

6 Q And I think you said that you implemented header
7 bidding with about 25 of the publishers that you worked
8 with?

9 A Yes.

10 Q Why did you implement header bidding 25 times even
11 though this latency drawback existed?

12 A Because you made significantly more revenue.

13 Q In your experience, did header bidding make fraud or
14 malware or spam worse?

15 A No.

16 Q Why not?

17 A Because it was -- I mean, we used third parties to help
18 manage that. Things like The Media Trust, they helped us
19 with malware and spam.

20 Yeah, it -- it was -- we just didn't see a --
21 like, there was always a time period with different
22 exchanges where they would get more malware or spam. And so
23 it was kind of like a cat-and-mouse game where you would try
24 to figure out exactly who it was coming from, but everybody
25 had their chance.

1 One of the ways that we used to combat that was,
2 we would set higher floors for certain exchanges if we felt
3 like we were seeing more malware or spam coming through,
4 because the fraudsters would tend to use the lower CPMs,
5 bids, in order to do that.

6 Q Based on what you observed when you were implementing
7 header bidding and working with these publishers, was Google
8 better than the other ones, any other exchanges, at
9 preventing fraud or malware or spam?

10 A No. They had their chance, too.

11 Q And by "they had their chance, too," what do you mean?

12 A Like, some days we would be like, oh, it's coming
13 through AdX. Right.

14 Q Are you familiar with Google's Open Bidding?

15 A Yes.

16 Q Was Google's Open Bidding better than header bidding at
17 preventing spam or fraud or malware?

18 A I don't know.

19 Q Let's see. After header bidding became popular, which
20 exchange bid lasts within DFP?

21 A Google.

22 Q And what is AdX bidding last in the header bidding time
23 period called?

24 A Last look.

25 Q Let's focus on your time at News Corp.

1 Do you have an understanding of whether last look
2 led to more revenue for News Corp?

3 A Yes.

4 Q And what is that understanding based on?

5 A Sure. So we ran an analysis based on our data, and we
6 found that when Prebid or header bidding responded, Google
7 would typically pay -- this was in the UK, so they would
8 typically pay between one and two pence above what all the
9 header bidding line items would respond.

10 Q And so what did you conclude from this analysis that
11 you did about whether last look generated additional revenue
12 for News Corp or not?

13 A So we concluded that there was not a lot of incremental
14 revenue value that was driven by Google for the header
15 bidding line items.

16 Q And Google publicly stated that it was giving up last
17 look at the end of 2019?

18 A Yes.

19 Q Do you have an understanding of how often Google Ads
20 bid slightly above the floor even after this end of last
21 look?

22 A Yes. We ran another analysis -- well, an outside party
23 ran another analysis for us, and, in that, we found that
24 that behavior still existed on bids from Google Ads.

25 MS. SESSIONS: Your Honor, objection. Hearsay.

1 THE COURT: Sustained. Sustained.

2 BY MR. VERNON:

3 Q What did you observe personally -- I'll move on.

4 Let's talk about UPR and price floors.

5 What is UPR?

6 A Unified Pricing Rules.

7 Q And what did UPR do?

8 A It made it so that all of the floors in DFP applied to
9 all the line items.

10 Q And what is a price floor?

11 A A price floor is what publishers set, and they don't
12 want people to buy their impressions below that price.

13 Q How does a price floor affect an auction?

14 A It basically says, like, if you respond with a bid
15 lower than this amount, you won't win the impression.

16 Q Prior to UPR, how did News Corp's floors for AdX
17 compare to its floors for the other exchanges?

18 A We typically set higher floors for AdX because AdX
19 would pay more.

20 Q And can you give the reasons why News Corp typically
21 sets higher floors for AdX before UPR?

22 A So typically it was because we could make more money
23 from Google Ads demand. Otherwise, Google Ads demand would
24 historically lower their bids.

25 Q How did setting higher floors for AdX affect the

1 quality of ads that News Corp saw?

2 A So it -- the higher the floor, the better quality ads
3 you typically got.

4 Q And how did setting higher floors for AdX affect News
5 Corp's dependence on AdX?

6 A It decreased our reliance on Google.

7 Q And why is that?

8 A Because we had less Google Ads demand, but they paid
9 higher rates.

10 Q How did news -- how did UPR affect News Corp's ability
11 to set a higher floor for AdX compared to other exchanges?

12 A You could no longer set a higher floor for AdX.

13 Q When did Google announce that it intended to implement
14 UPR?

15 A They had a meeting in 2019 where they announced it to a
16 bunch of different publishers in a room at Google.

17 Q Did you think that UPR was in News Corp's best
18 interests?

19 A No.

20 Q Why not?

21 A Because I think it took control out of our hands.
22 Right. So it made it so that we could no longer choose how
23 to best monetize our inventory.

24 Q Did you provide any feedback to Google about UPR in
25 that April of 2019 meeting that you mentioned a minute ago?

1 A Constantly.

2 Q But just focusing on the April 2019 meeting, did you
3 provide any feedback to Google?

4 A Yep. A lot of feedback.

5 Q What did you say?

6 MS. SESSIONS: Objection, Your Honor. Hearsay.

7 MR. VERNON: Your Honor --

8 THE COURT: No. I'm going to permit it. You can
9 cross-examine on that. It's what she said to Google. She's
10 here, she can be cross-examined.

11 Go ahead.

12 MR. VERNON: Thank you, Your Honor.

13 BY MR. VERNON:

14 Q What feedback did you provide to Google about UPR in
15 this April meeting?

16 A I told them that I believe that they were doing UPR in
17 the best interests of Google and not in the best interests
18 of their publishers.

19 Q And outside of the context of this meeting, were there
20 any other times when you provided feedback to Google about
21 UPR?

22 A Yes.

23 Q And what did you say?

24 A I told them that it felt like they were making a
25 product feature that was not in my best interests, and that

1 I wanted to switch ad servers, but that the tying of DFP and
2 AdX made it too much of a revenue risk, and they knew that,
3 so I felt like they were holding us hostage.

4 Q And after you provided this feedback to Google about
5 UPR, how did Google respond?

6 A I don't remember exactly how they responded, but
7 nothing changed.

8 Q Did Google say anything else to you or to your managers
9 when you provided feedback to Google about UPR?

10 MS. SESSIONS: Objection, Your Honor.

11 THE WITNESS: Yes.

12 THE COURT: Sustained.

13 MR. VERNON: Your Honor, if I may, we think this
14 statement is admissible for just the fact that it was said;
15 not for the truth of what we're about to get into. It isn't
16 going to be admissible for the truth, but just for the fact
17 that it was said.

18 THE COURT: No.

19 MR. VERNON: Okay.

20 BY MR. VERNON:

21 Q Google ultimately did implement UPR?

22 A Yes.

23 Q When did Google implement UPR?

24 A In 2019.

25 Q When you were evaluating the Xandr ad server, what did

1 you learn about whether Xandr would have allowed News Corp
2 to set different floors for different exchanges?

3 A You would be allowed to set different floors for
4 different exchanges.

5 Q Did you say would or would not?

6 A You -- in Xandr? In Xandr, you could set different
7 floors for different exchanges.

8 Q So why did News Corp not switch to a different ad
9 server in order to avoid UPR?

10 A Google AdX demand.

11 MR. VERNON: Can we please turn in your binder to
12 PTX 754.

13 THE COURT: Is there any objection to this
14 exhibit?

15 MS. SESSIONS: Your Honor, it's hearsay to the
16 extent that the plaintiffs are offering it for the truth of
17 the matters asserted.

18 MR. VERNON: Your Honor, we believe this is
19 admissible for multiple reasons. First, for the non-truth
20 purpose, that she said it, because these are statements by
21 Ms. Layser; second, as a statement of mind; and, third, for
22 effect on the listener. And we are not -- there's a top
23 email that -- Google executives. We're not focusing on that
24 part.

25 THE COURT: In other words, you just want the

1 email that starts in the middle?

2 MR. VERNON: Yeah. We're only focused on
3 Ms. Layser's email; we're not focused on the top email with
4 Ms. Bergin.

5 THE COURT: The one that begins: "Hope you guys
6 are having a great week" is the one you want in?

7 MR. VERNON: Yes, Your Honor.

8 THE COURT: I'll permit this, but we'll have to
9 edit the exhibit, because if the top part is not going into
10 evidence, then it's not going into evidence.

11 MR. VERNON: Yes. We can do that, Your Honor.

12 THE COURT: All right.

13 MR. VERNON: The United States moves to admit 754.

14 THE COURT: All right. It's in.

15 (Plaintiffs' Exhibit Number **754** admitted into evidence.)

16 BY MR. VERNON:

17 Q Let's focus on the second line in the large paragraph
18 that starts with "first thing" on your email; do you see
19 that?

20 A Yes.

21 Q You write: "One of my biggest issues with the current
22 functionality and proposed functionality of GAM" -- and GAM
23 refers to DFP?

24 A Yes.

25 Q -- "is that AdX is currently" --

1 A GAM is DFP and AdX together.

2 THE COURT: I'm sorry, what was the answer?

3 THE WITNESS: GAM is DFP and AdX together. They
4 merged the two products together.

5 BY MR. VERNON:

6 Q "AdX is currently tied to DFP functionality leaving me
7 forced into using the ad server should I want full access to
8 AdWords, GDN and DV360 demand on a real-time basis."

9 Why did you tell Google that you had this issue
10 with GAM?

11 A On April 23rd, 2019.

12 Q Yes.

13 A When did I tell them that issue?

14 Q Why. Why did you tell Google about this issue?

15 A Why? Because I was frustrated that I had to use their
16 ad server in order to get access to AdX demand.

17 Q And why were you frustrated?

18 A Because they were making product decisions that were
19 not in the best interests of my business, and I felt stuck.

20 Q Why did you feel stuck?

21 A Because I couldn't innovate. I couldn't get -- like, I
22 couldn't get real-time pricing. So all these different
23 ideas and things that we had been talking about in our
24 business I couldn't do because my ad server didn't have
25 this, like -- like, this functionality that I needed. And

1 if I didn't have the reliance on Google Ads demand, we would
2 be switching ad servers, but because I had this reliance,
3 then we couldn't.

4 THE COURT: In other words, you wanted to always
5 have access to the advertising portion of the system?

6 THE WITNESS: Yeah. But I didn't -- yeah.

7 THE COURT: And the largest cache of advertisers?

8 THE WITNESS: Yes.

9 THE COURT: And you wanted that, but you didn't
10 want to have to go through the system to get to that?

11 THE WITNESS: Correct.

12 THE COURT: Okay.

13 BY MR. VERNON:

14 Q And I think you mentioned that you were unhappy with
15 changes in this email. I'm sorry.

16 If you look at the very bottom phrase, the last
17 line of this paragraph, what changes were you referring to
18 there?

19 A Unified Pricing Rules.

20 Q After you sent this email, what did Google do to
21 address the problems that you identified with GAM in this
22 email?

23 A Well, after this -- after this email and after the
24 Unified Pricing Rules and after another meeting that we had
25 with our product folks, Dorothee and Lauren set up a meeting

1 with me, and they told me that they weren't going to --

2 MS. SESSIONS: Your Honor, I'm going to object as
3 hearsay. She's about to testify about what somebody told
4 her in a meeting.

5 THE COURT: If you're offering this for the truth
6 of what they said, it can't come in. If it's offered to
7 explain actions which this witness then took, it would be
8 all right. All right.

9 MR. VERNON: So we would offer it first as a party
10 admission; and second, for the fact that it was said, not
11 for -- the statement here we are not offering for its truth.

12 MS. SESSIONS: It's not a party admission, Your
13 Honor, because they haven't established that the person in
14 this meeting had authority to speak on the subject and --

15 THE COURT: If they're not offering for the truth,
16 then we're not going to have to worry about it being
17 hearsay.

18 Go ahead.

19 BY MR. VERNON:

20 Q And what did they say?

21 A They called me emotional and unproductive.

22 Q Did Google, after you provided this feedback, do
23 anything to fix the problems that you identified about the
24 tie between DFP and AdX?

25 A No.

1 Q Did Google do anything to fix the problems that you
2 identified with UPR?

3 A No.

4 Q Okay. You can set that aside.

5 MR. VERNON: Your Honor, at this point, we would
6 like to play a recording for a very limited purpose. So we
7 are really playing it for the limited purpose of asking if
8 Ms. Layser can authenticate a voice for two short clips.

9 This is a multi-speaker recording, so we are not
10 seeking to admit it now. We will seek to admit it with a
11 later witness, we're just doing the small authentication
12 portion.

13 THE COURT: Is there an issue as to who the
14 speakers are? Is that in dispute?

15 MR. VERNON: That's what we are trying to
16 establish here.

17 THE COURT: Well, let me hear. We've got Google
18 counsel right here.

19 Are you disputing?

20 MS. SESSIONS: Yeah. I'm not sure what exactly --

21 THE COURT: Well, the two of you talk for a
22 second.

23 MS. SESSIONS: I think we could maybe take a brief
24 recess and discuss this.

25 THE COURT: No, I don't want to take a recess now.

1 Very quickly, the two of you just talk quickly.

2 MS. SESSIONS: Sure.

3 (Pause.)

4 THE COURT: Is there a dispute as to who the
5 speakers are in that conversation?

6 MS. SESSIONS: I don't think that there's going to
7 be a dispute.

8 THE COURT: All right. Why don't you tell me who
9 you believe are the speakers. You must know.

10 MR. VERNON: We have these two clips. We believe
11 it's Ms. Layser.

12 THE COURT: I'm sorry?

13 MR. VERNON: These two clips, we believe
14 Ms. Layser was the speaker for these two.

15 MS. SESSIONS: And, Your Honor, we're not going to
16 dispute that Ms. Layser was the speaker.

17 THE COURT: All right. Then we don't need to play
18 them right now. Or do you want to play them right now?

19 MR. VERNON: Yes, Your Honor, you're right.

20 THE COURT: I'm sorry?

21 MR. VERNON: Yes, Your Honor.

22 THE COURT: Yes what?

23 MR. VERNON: Yes, we don't need to play them right
24 now if there's no dispute over the voice.

25 THE COURT: All right. Fine. There's no dispute.

1 BY MR. VERNON:

2 Q One last point about UPR, Ms. Layser.

3 You mentioned that UPR prevented publishers from
4 setting higher floors for AdX than for other exchanges; do
5 you remember that?

6 A Yes.

7 Q Did UPR prevent publishers from setting higher floors
8 for other exchanges than for AdX?

9 A No.

10 Q Why did UPR not prevent publishers from setting higher
11 floors for other exchanges than for AdX?

12 A Because you could set higher floors inside the
13 exchanges' systems, or you could do it inside something like
14 the floor's module inside header bidding.

15 MR. VERNON: Thank you. With that, we pass the
16 witness.

17 THE COURT: So when you say a floor, you're
18 talking about Wall Street Journal wants to sell ad space on
19 the front page of the sports section?

20 THE WITNESS: Yeah.

21 THE COURT: All right. And they are saying we
22 want, I'll just use numbers, 15 cents per line?

23 THE WITNESS: Right.

24 THE COURT: To one exchange. And they might,
25 because the other exchange may have a larger base of

1 advertisers, for them, ten cents per line. And that's what
2 you're saying they could do with different exchanges?

3 THE WITNESS: Yes. So --

4 THE COURT: But with the Google exchange system,
5 they would be stuck with whatever number Google gave them or
6 whatever number they gave to Google?

7 THE WITNESS: So, Wall Street Journal would put
8 the price into the price -- like the price floors in AdX
9 inside their system, we would put that in. And then that is
10 the amount that the -- like, that you can't buy the
11 inventory below.

12 THE COURT: Right. So, in other words, when you
13 went into the AdX system --

14 THE WITNESS: Yep.

15 THE COURT: -- you would say we want 14 cents per
16 line; right?

17 THE WITNESS: Yes.

18 THE COURT: And if you got the 14 cents, you got
19 what you wanted; right?

20 THE WITNESS: Yeah. But you also wanted -- if you
21 could get other folks to compete, right, then it would help
22 you to maximize revenue. Right. So the floor isn't just
23 the acceptable amount; it's, like, the lowest you were
24 willing to accept.

25 THE COURT: All right. I understand that.

1 THE WITNESS: Okay. Cool.

2 BY MR. VERNON:

3 Q Let me ask one clarifying question in response to an
4 earlier question.

5 I think you referred to wanting to get access to
6 Google Ads demand; do you remember that?

7 A Yes.

8 Q Were you referring to getting access to Google Ads
9 demand directly or through AdX?

10 A Can you repeat the question?

11 Q Sure.

12 So earlier you referred to when you were at News
13 Corp, you wanted to get access to Google Ads demand.

14 A Yes.

15 Q Were you referring to getting access to Google Ads
16 demand directly or through AdX?

17 A Through AdX. The only place you can get Google Ads
18 demand is through AdX.

19 MR. VERNON: Okay. Thank you. We pass the
20 witness.

21 THE COURT: All right. We need to get the books
22 up here for cross-examination.

23 MS. SESSIONS: I think the books are already up
24 there.

25 CROSS-EXAMINATION

1 BY MS. SESSIONS:

2 Q Good morning, Ms. Layser.

3 A Hi.

4 Q My name is Justina Sessions, and I represent Google,
5 and I'm going to be asking you some questions this morning.

6 A Okay.

7 Q Just a point of clarification on the last exchange that
8 you had with Her Honor --

9 THE COURT: Bad pun.

10 MS. SESSIONS: Indeed. There are a lot of bad
11 puns that we can make in this case.

12 THE COURT: You got the first one.

13 MS. SESSIONS: Thank you, Your Honor.

14 BY MS. SESSIONS:

15 Q The publisher sets the price floor that goes into DFP;
16 correct?

17 A Yes.

18 Q So you worked at News Corp for quite a while; right?

19 A Yes.

20 Q And News Corp sells ad space on its digital properties?

21 A Yes.

22 Q Google also sells ad space on its digital properties;
23 right?

24 A Yes.

25 Q And News Corp competes for digital advertising dollars

1 with companies like Google; right?

2 A Yes.

3 Q News Corp also competes for digital advertising dollars
4 with companies like Facebook?

5 A Yes.

6 Q And as Amazon was getting into advertising, News Corp
7 was also starting to compete for digital advertising dollars
8 with Amazon; right?

9 A Yes.

10 Q And you wanted News Corp to take more market share from
11 Google and Facebook; right?

12 A Yes.

13 Q You also wanted News Corp to take more market share
14 from Amazon?

15 A Yes.

16 Q And you now work for Amazon?

17 A Yes.

18 Q And you're the global head of publisher ad tech
19 solutions at Amazon Web Services; is that right?

20 A Yes.

21 Q In addition to selling ad space, Amazon also offers
22 tools that help advertisers to buy ad space; right?

23 A Yes.

24 Q And those tools compete with Google's?

25 A Yes.

1 Q Amazon also offers tools that help ad space sellers
2 sell ad space; right?

3 A Yes.

4 Q And those tools compete with Google's?

5 A Yes.

6 Q Before you worked at Amazon in 2017, you believed that
7 digital advertising would become a triopoly; didn't you?

8 A When?

9 Q In 2017?

10 A In 2017.

11 Q You had the belief that digital advertising would
12 become a triopoly?

13 A Yeah.

14 Q And that triopoly consisted of Facebook, Google and
15 Amazon; is that right?

16 A Yes.

17 Q Your work at Amazon Web Services --

18 A Yes.

19 Q -- is -- you serve other tech customers; is that right?

20 A Ad tech customers and publishers.

21 MR. VERNON: Objection. Scope. We didn't ask
22 about Amazon --

23 THE COURT: All right. Again, I'm going to
24 continue with my view that we're having a little flexibility
25 on scope. All right. You can address the issues on

1 redirect.

2 Go ahead.

3 BY MS. SESSIONS:

4 Q You work with ad tech vendors and publishers and
5 marketers at Amazon Web Services?

6 A Mostly publishers.

7 Q And so some of your customers at Amazon Web Services
8 are Google's competitors?

9 A Yes.

10 Q You have customers at Amazon Web Services that are
11 building their own ad servers?

12 A Yes.

13 Q And The Trade Desk is an Amazon Web Services customer?

14 A Yes.

15 Q And The Trade Desk has a DSP or a buy-side platform?

16 A Yes.

17 Q FreeWheel is an Amazon Web Services customer?

18 A Yes.

19 Q And I believe you testified before that FreeWheel is an
20 ad server?

21 A Yes. Video ad server.

22 Q Do you know if FreeWheel is capable of serving display
23 impressions?

24 A No.

25 Q You don't know or you don't think it is?

1 A I don't know.

2 Q Okay. Yieldmo is an Amazon Web Services customer?

3 A Yes.

4 Q Okay. And Yieldmo is an ad exchange?

5 A Yes.

6 Q Amazon's buying tools are also Amazon Web Services'
7 customers; right?

8 A Can you repeat it?

9 Q Amazon's buying tools, Amazon's DSP, for instance,
10 Amazon's DSP is a customer of Amazon Web Services; right?

11 A Yes.

12 Q So you've talked about some features and some changes
13 that you believe were made in Google's ad server; do you
14 recall that testimony?

15 A Yes.

16 Q You agree that some of the features that Google
17 introduced in its ad server made publishers more money;
18 right?

19 A In the short term.

20 Q So, for instance, you agree that Dynamic Allocation
21 made publishers more money?

22 A In the short term.

23 Q And Enhanced Dynamic Allocation made publishers more
24 money?

25 A In the short term.

1 Q In fact, many times the optimizations or the changes
2 that Google introduced into your ad server pushed you right
3 over your budget and got you your quarterly bonus at News
4 Corp?

5 A Short term, yeah.

6 Q And you agree that Google's move to a first-price
7 auction generally made things more fair?

8 A I would say that the change to the first-price auction,
9 yes, made it more fair, but I think the subsequent product
10 features, like minimum bid to win, made it less fair.

11 Q And minimum bid to win, that is a product feature where
12 the minimum bid that was necessary to win the auction is
13 sent to auction participants after the auction runs; is that
14 what you're referring to?

15 A Yes. So the winning bid gets the next highest bid, and
16 then the losing bid is told what the winning bid is.

17 Q And so that is -- that was -- Google rolled that
18 feature out along with the change to the first-price
19 auction?

20 A Yes.

21 Q And your problem with minimum bid to win was that
22 initially it was not shared with header bidders?

23 A Yes.

24 Q And were you aware that you, the publisher, could share
25 the minimum win to bid data with header bidders if you so

1 chose?

2 A Yes, but not in real time. You needed to do it in real
3 time to make it at parity with Google.

4 Q Are you aware one way or the other whether Google
5 shares minimum bid-to-win data with header bidders today?

6 A Not in the last two years. So maybe in the last two
7 years.

8 Q Okay. So I believe you discussed with my colleague an
9 evaluation that News Corp did of potentially switching from
10 DFP to AppNexus or Xandr as its ad server; is that right?

11 A Yes.

12 Q And Xandr is now owned by Microsoft; correct?

13 A Yes.

14 Q Okay. If you could open up your binder and turn to
15 tab 14, please.

16 THE COURT: Are you going to move this in?

17 MS. SESSIONS: I am, Your Honor. And I can lay a
18 foundation if there is going to be an objection to it. But
19 tab 14 is Defense Exhibit 404, which Google does move into
20 evidence.

21 MR. VERNON: No objection, Your Honor.

22 THE COURT: All right. It's in.

23 (Defense Exhibit Number 404 admitted into evidence.)

24 BY MS. SESSIONS:

25 Q Ms. Layser, is Defense Exhibit 404 the analysis that

1 News Corp performed that you were referring to?

2 A Yes.

3 Q And the project name of this was Project Cinderella?

4 A Yes.

5 Q So if you could turn now to page 2 of the document in
6 your binder. You'll see at the bottom of page 2 there's a
7 statement about developing a clear roadmap to overhaul ad
8 tech stack.

9 And there, News Corp states that "Google owns a
10 media business versus AppNexus's focus on offering publisher
11 pipes, so it is likely that our long-term goals will never
12 align with Google, given their other business interests"; do
13 you see that?

14 A Yes.

15 Q And that was News Corp's analysis?

16 A Yes.

17 Q So News Corp thought that its goals would never align
18 with Google's, and that's because Google had a media
19 business that competed with News Corp's?

20 A Yes.

21 Q If you can now flip back to page 1 of this analysis,
22 and there's an executive summary on the first page.

23 News Corp looked at the relative prices between
24 AppNexus or Xandr and Google's ad server and concluded that
25 the price difference for ad serving was marginal; right?

1 A Yes.

2 Q Okay. And News Corp believed that it would be able to
3 get better ad serving rates from Google with further
4 negotiation; right?

5 A Yes.

6 Q And News Corp was a big Google customer?

7 A Hold on. Not better than AppNexus, but better than the
8 current terms that we have with Google.

9 Q Okay. So News Corp believed that it could get better
10 rates from Google if it negotiated with Google?

11 A Yes.

12 Q And News Corp was a big customer of Google's at this
13 time?

14 A I don't know how big of a customer News Corp is for
15 Google.

16 Q News Corp is a big publisher?

17 A Yes.

18 Q Okay. And if you go to page 2 of this document,
19 there's a statement here that News Corp thought it could use
20 the contract negotiation as leverage to make changes in the
21 News Corp/Google relationship?

22 A Yes.

23 Q And News Corp thought that? News Corp thought it could
24 use the contract negotiation as leverage to make changes in
25 the company's relationship?

1 A Yes.

2 Q Okay. And is that referring to Google's treatment of
3 News Corp content in its search results?

4 A I don't know. I'm not part of that -- that part of
5 our -- or wasn't part of that part of our business.

6 Q So going back to page 1, the summary here, News Corp
7 believed that DFP and AppNexus or Xandr had balanced
8 strengths and weaknesses in terms of functionality and
9 roadmap; is that right?

10 A Yes, at the time.

11 Q Okay. And News Corp thought at the time that Google
12 offered far better service and support than AppNexus; is
13 that right?

14 A Yes.

15 Q And this is in 2017; correct?

16 A Yes.

17 Q News Corp -- News Corp did think, though, that AppNexus
18 was less of a full-service solution than DFP; correct? And
19 if you want to look, it's on page 13. Sorry, page 3.

20 A Three. Oh, okay. Page 3.

21 Q "AppNexus serves less like a full-service solution and
22 more as a set of flexible transparent pipes in which our
23 teams can build deeper functionality and personalization";
24 do you see that?

25 A So, yes. What that's referring to is something that's

1 more of like a pipe solution, you have to build around it.
2 Right. With something like DFP, it was -- it was a
3 difference of being able to, like, personalize it and get
4 the data that you want out of it, versus like the change
5 management that was required for your -- like, for your
6 personnel.

7 Q So it was going to take resources for News Corp to
8 build things around the pipes that AppNexus would offer with
9 its ad server solution?

10 A Correct. But we would be able to get our log-level
11 data. So that was like an exciting piece that we could
12 build on top of.

13 Q So now I want to talk about the ad exchange portion of
14 this analysis.

15 So if you turn to page 4, there's an analysis of
16 business terms on page 4; do you see that?

17 A Yes.

18 Q And News Corp believed that as a part of this
19 negotiation, that it would be able to negotiate lower
20 revenue shares with AdX than it had at the time; is that
21 right?

22 A Yes.

23 Q News Corp thought that it would be able to get a tiered
24 revenue share structure where some Open Auction impressions
25 would cost less than 20 percent; is that right?

1 A Yes.

2 Q And News Corp did, in fact, negotiate a tiered revenue
3 share with AdX where it paid less than 20 percent on some
4 Open Auction impressions; correct?

5 A The more impressions we gave to Google, the lower the
6 percentage they would take. So increasing reliance on
7 Google.

8 Q So you got a volume discount --

9 A Volume discount.

10 Q -- with AdX?

11 And so when you had more revenue going through
12 AdX, you weren't paying 20 percent on each of those
13 impressions?

14 A Yes.

15 Q As a part of this ad server analysis, News Corp also
16 thought about making some feature requests to Google?

17 A Yes.

18 Q Okay. And I believe that log-level data was one of the
19 things that you testified about.

20 If you could turn to page 12. Seamless
21 functionality between DFP and AdX was an additional feature
22 request that News Corp would make of Google; correct?

23 A I actually didn't write this, so I'm not sure what it
24 means.

25 Q Okay. It says: "Seamless functionality between DFP

1 and AdX"; right? Do you see that?

2 A Yeah, but it says there's lack of insight into how to
3 optimize inventory, and I'm not sure what that exactly
4 means.

5 Q Okay. You're not sure what it means, but you see that
6 it appears under a list of feature requests here in this
7 exhibit; right?

8 A Yeah. But it doesn't really tell me the whole story.

9 Q Now, as a part of this analysis, News Corp acknowledged
10 that if it switched ad servers, it was still going to retain
11 access to some AdWords demand; right?

12 A We thought that there was a chance with the information
13 that we had at that moment in time, because -- so I ran the
14 analysis. It was really hard to run the analysis because we
15 didn't get access to log-level data, so I couldn't, like,
16 actually look at the bid behavior between AdX and do, like,
17 a full analysis. So we kind of ran like a conservative,
18 okay, how many is the AdWords demand, and then --

19 Q So, Ms. Layser, my question was actually just rather
20 you understood that you would retain access to some AdWords
21 demand if you switched ad servers.

22 A Yeah. So we looked at -- it was like 50/50.

23 Q Okay. Yeah. So if you turn to page 11 of this
24 document, there's an analysis of potential revenue risk; do
25 you see that?

1 A Yes.

2 Q Okay. And here you say while we would retain some
3 access to AdWords demand, you believe that you would face a
4 drop in revenue; is that right?

5 A Yes. It was unclear how much it would affect us if we
6 switched.

7 Q And then there's a table here that shows the analysis
8 of the amount of AdX revenue that AdWords made up, and then
9 the amount of AdX revenue that made up the total
10 programmatic revenue for various properties; do you see
11 that?

12 A Yeah.

13 Q Okay. And just to be clear, when it says AdWords here,
14 does that also mean Google Ads?

15 A Yes.

16 Q Okay. So let's look at the News Australia line here.

17 So Google Ads was 33 percent of the revenue that
18 News Australia was getting into AdX; is that right?

19 A Yes. Outside of the U.S., the numbers are usually
20 lower when you look at publishers in terms of the percent.

21 Q And that figure for AdWords or Google Ads, that
22 33.3 percent, that's all of the revenue that was going into
23 AdX from Google Ads, that's not just from advertisers that
24 could be found only on Google Ads and nowhere else; correct?

25 A Sorry. Can you repeat the question?

1 Q Yes. The AdWords or AdX number, the 33 percent of
2 AdX --

3 A Yep.

4 Q -- you totaled up all of the revenue that was coming
5 into AdX from Google Ads; correct?

6 A Yes.

7 Q You didn't isolate revenue that was coming from
8 advertisers that used only Google Ads and no other way of
9 buying advertising; right?

10 A So marketers usually buy, like, Google Ads, and then
11 they also buy other -- like, it's usually -- there's
12 different KPIs, they're different ad products.

13 Q So my question is not about that.

14 My question is whether News Corp ever analyzed the
15 proportion of this AdWords' revenue that came from
16 advertisers that used Google Ads and not any other buying
17 tool to buy display ads.

18 A No. I wouldn't have that data. That would have -- I
19 don't even think that would be in the logs.

20 Q News Corp never did that analysis?

21 A No.

22 Q Okay. So looking back again at this News Australia
23 line, 33 percent of AdX is coming from AdWords, and then AdX
24 is 52 percent of News Australia's total programmatic
25 revenue; is that right?

1 A Yes.

2 Q Okay. So if I've done my math right, all told, AdWords
3 or Google Ads was about 17 percent of News Australia's total
4 programmatic revenue?

5 A I would need a calculator.

6 Q And that's -- and the programmatic revenue number here
7 is just News Australia's programmatic revenue, that doesn't
8 include revenue from direct deals; is that right?

9 A Correct.

10 Q And let's look at another line here. News UK.

11 AdWords made up 39.1 percent of the AdX revenue
12 that News UK was getting?

13 A Yes.

14 Q And, again, that's all of AdWords, not just advertisers
15 that could be only found on AdWords; correct?

16 A Correct.

17 Q And then AdX as a demand source was 34.8 percent of all
18 of the programmatic revenue that News UK was receiving; is
19 that right?

20 A Yes.

21 Q Okay. And, again, if I had done my math right, the --
22 taking those numbers comes out to AdWords -- all of AdWords
23 being about 13 percent of News UK's total programmatic
24 revenue?

25 A Yes. I don't know. I actually don't know off the top

1 of my head.

2 Q I had to use a calculator. You can put that aside.

3 So I think as we just saw from this exhibit, News
4 Corp was getting programmatic ad revenue from sources other
5 than AdX and Google Ads; right?

6 A Yes. Our strategy was --

7 Q I'm sorry. Ms. Layser, you'll have plenty of time to
8 further explain, but I'd like to keep moving this along.

9 A Sure.

10 Q Thank you.

11 News Corp used Amazon's Transparent Ad Marketplace
12 to get bids?

13 A Yes.

14 Q Okay. And Transparent Ad Marketplace is Amazon's
15 header bidding product?

16 A Yes.

17 Q News Corp also used Prebid as a header bidding product;
18 right?

19 A Yes.

20 Q Okay. And so there were other SSPs besides AdX that
21 submitted bids for News Corp's inventory?

22 A Yes.

23 Q Index Exchange could transact News Corp's inventory?

24 A Yes.

25 Q And Rubicon, which is now known as Magnite, could

1 transact?

2 A Yep.

3 Q OpenX?

4 A Yes. On some of our businesses.

5 Q And media.net?

6 A Yeah.

7 Q Okay. Nativo could bid on News Corp ad space?

8 A Yes. I think one of our business units, yeah.

9 Q PubMatic could bid on News Corp's ad space?

10 A Some of them, yeah.

11 Q Criteo -- or Criteo, could bid on News Corp's ad space?

12 A Yes.

13 Q TripleLift?

14 A Yes.

15 Q Amazon's DSP could bid on News Corp's ad space?

16 A Yes.

17 Q And Tremor could bid on News Corp's ad space?

18 A I don't remember.

19 Q I will spare us all the labor of Googling through an
20 ads.txt file.

21 And some of these other companies that were
22 bidding on News Corp's ad space also advertised to News Corp
23 that they had unique demand; right?

24 A Yes.

25 Q If you could turn in your binder to tab 20, and this is

1 Defense Exhibit 382.

2 THE COURT: Is there -- are you putting in the
3 whole thing?

4 MS. SESSIONS: Yes. We would like to move the
5 entire email chain into evidence.

6 THE COURT: Is there any objection? Any objection
7 to 382?

8 MR. VERNON: No objection.

9 THE COURT: All right. It's in.

10 (Defense Exhibit Number 382 admitted into evidence.)

11 BY MS. SESSIONS:

12 Q Ms. Layser, you see that Defense Exhibit 382 at tab 20
13 there, this is an email chain where the last-in-time email
14 is from you to Lindsay Fulton as Defy Media?

15 A Yes.

16 Q And we're just going to walk through some of this
17 chain, if you'll indulge me.

18 So if you could turn to page 7. And page 7 of
19 Defense Exhibit 382, there's a message from Ms. Fulton to
20 some folks at News Corp, and she's trying to get News Corp
21 to do a deal with her company for them to buy ad space on
22 News Corp; is that right?

23 A Can I read it?

24 Q Sure.

25 A Okay.

1 Q If you want to go to page --

2 A I'll start on 7?

3 Q Just start on page 7.

4 A And then go on. All right.

5 Q In the middle of the page.

6 A All right.

7 Q And it's up on the screen for you, too, if that's
8 easier.

9 A Good. Yeah. That is easier.

10 Q Ms. Fulton writes: "Thank you, Catherine. Pleasure to
11 meet you, Brian and John." And you see the email that she
12 writes below there.

13 A Yes.

14 Q So she was trying to do a deal with News Corp for Defy
15 Media to buy ad space on News Corp's properties?

16 A Yes.

17 Q And as part of that, Ms. Fulton wrote to News Corp:
18 "We here at Defy Media have new unique ad budgets that we
19 would like to share with the WSJ portfolio of sites"; do you
20 see that?

21 MR. VERNON: We have an objection to this as
22 hearsay if it's offered for the truth.

23 MS. SESSIONS: I'm not offering it for the truth
24 of whether or not they, in fact, had a unique ad budget, but
25 just for the fact that this was said and for the effect on

1 the listener.

2 THE COURT: Then I'm overruling the objection.

3 That's fine. It can go in that way.

4 BY MS. SESSIONS:

5 Q So Ms. Fulton was advertising to News Corp that, at
6 Defy Media, they had new unique ad budgets; is that right?

7 A Yes.

8 Q Okay. And she was also advertising that the
9 advertisers that she could bring were all -- were premium;
10 right?

11 A Yes.

12 Q Okay. Now, there's a back-and-forth in this email and
13 some discussion about how Defy Media might potentially
14 integrate with News Corp, and I want to ask you now about a
15 statement on page 2 after you're added to this email chain.

16 So if you see on page 2 of the document, you write
17 an email that begins: "Hi, Lindsay. We're using AppNexus
18 as an SSP implemented through Prebid"; do you see that?

19 A Yes.

20 Q Okay. And when you say "We're using AppNexus as an SSP
21 implemented through Prebid," that means you were using
22 Prebid to call AppNexus as an SSP?

23 A Let me read it real quick. Thanks.

24 Okay. What was the question?

25 Q So you said: "We're using AppNexus as an SSP

1 implemented through Prebid." That meant that News Corp was
2 using Prebid to call AppNexus as an SSP?

3 A Yes.

4 Q Okay. And then you asked Ms. Fulton: "Do you have DSP
5 functionality to buy on AppNexus's platform?" You were
6 asking her whether Defy Media could buy into AppNexus?

7 A Yes.

8 Q And then there's a further technical discussion about
9 this implementation, and Ms. Fulton seems to suggest that
10 she would like to go kind of directly into Prebid rather
11 than going through AppNexus; is that right?

12 A Yeah.

13 Q Okay. And you, on page 1, respond to Ms. Fulton: "To
14 manage latency, we only have a maximum of four"; do you see
15 that? At the bottom of page -- it's your email at the
16 bottom of page 1.

17 A Yes.

18 Q Okay. To manage latency, we only have a maximum of
19 four; do you see that?

20 A Yes.

21 Q You meant that News Corp was only putting four partners
22 into header bidding; right?

23 A Yes.

24 Q And you were doing that to manage latency concerns you
25 had with the header bidding implementation?

1 A Yes.

2 Q Now, Ms. Fulton responds again to you, I guess making
3 one more effort to try to get a deal done, and you'll see in
4 the middle of page 1, Ms. Fulton responds again. "Our
5 demand is unique to us, meaning that you will not find these
6 budgets anywhere else"; do you see that?

7 A Yes.

8 Q That advertisement of Ms. Fulton's unique demand and
9 budgets you could not find anywhere else was not enough for
10 you to do a deal with Defy Media; correct?

11 A So if you see up at the top, I talk about the other
12 integrations where there's a 50 percent discrepancy. And so
13 we didn't like to do, like, partnerships with people where
14 we would lose ad opportunities, and Defy Media was notorious
15 for that at this point in time.

16 Q So you didn't want to do a partnership with Defy Media?

17 A Her promise of unique demand didn't outweigh the past
18 behavior of the discrepancies that I had seen from
19 AppNexus -- or from Defy.

20 Q Understood.

21 I have one last question about this email chain
22 for you, which is your response -- final response to
23 Ms. Fulton at the top.

24 You write: "I am fully aware of what wrapper
25 technology does on the publish side. We limit to four

1 because the code adds weight to the client side page"; do
2 you see that?

3 A Yes.

4 Q And that reference to the code adding weight to the
5 client side page, that's the additional code that is
6 required to put on the page to add additional header bidding
7 partners; right?

8 A Yes.

9 Q It's not just Defy Media that advertises that it has
10 unique demand; right?

11 A Yes.

12 Q For example, Amazon also advertises that it has unique
13 demand?

14 A Yes.

15 Q Amazon advertises that its Unified Ad Marketplace can
16 access unique demand from Amazon?

17 A Yes.

18 Q And, similarly, Amazon's Transparent Ad Marketplace
19 accesses unique demand from Amazon?

20 A Yes.

21 Q You testified earlier that you did another analysis of
22 AdX demand while you were at News Corp. And I'm going to
23 ask, did you -- you did an analysis in 2019 regarding
24 deprioritizing Google's ad exchange; is that right?

25 A Yes.

1 Q If you could turn to tab 22 in your binder.

2 MS. SESSIONS: And this document is Defense
3 Exhibit 655, which we would move into evidence at this time.

4 MR. VERNON: No objection, Your Honor.

5 THE COURT: All right. 655 is in evidence.

6 (Defense Exhibit Number 655 admitted into evidence.)

7 BY MS. SESSIONS:

8 Q Ms. Layser, Defense Exhibit 655 is the analysis that
9 News Corp did of deprioritizing Google's ad exchange; right?

10 A Yes.

11 Q Okay. And News Corp did this analysis in 2019 after
12 Google moved to a first-price auction; right?

13 A No. It was before.

14 Q So if you look at page 1 here --

15 A The first-price auction was after unified pricing, or
16 it was during Unified Pricing Rules.

17 Q So my question for you -- and you can look at the
18 second paragraph on page 1 -- is whether this analysis was
19 done before or after Google moved to a first-price auction.

20 A Sorry. Where is that?

21 Q So I'll just direct you to the second paragraph that
22 said: "The widespread changes to Google AdX are forced upon
23 publishers from the introduction of Google's unified
24 pricing," and then it goes on.

25 Does this lead you to understand that this

1 analysis was done after Google moved to a first-price
2 auction?

3 MR. VERNON: Objection. There's a date on the
4 next page that says when this was done.

5 BY MS. SESSIONS:

6 Q If that helps, you can look at page 2. It does say
7 there was a test done between April 29th and May 26th.

8 So I'll ask again if you know whether this was
9 done before or after Google moved to a first-price auction.
10 And if you don't know, that's fine.

11 A Yeah.

12 Q Okay. You don't know?

13 A I'm pretty sure we did this before, but I am not --
14 before -- because I think unified pricing, the meeting was
15 in April 2019.

16 Q So you don't know one way or the other whether this
17 analysis --

18 A Right. It was a long time ago.

19 Q Okay. As part of this analysis, News Corp decided to
20 let other SSPs have a first look ahead of AdX; is that
21 right?

22 A After header bidding ran the auction, we blocked Google
23 from being able to buy those impressions.

24 Q If you turn your attention to page 1, it's showing now
25 on your -- oh, your screen has turned off. Let's see.

1 Let's see if maybe we could get that back on.

2 THE COURT SECURITY OFFICER: Your Honor, it keeps
3 shutting off, and I keep putting it on, and it keeps turning
4 off.

5 THE COURT: Give her the hard copy.

6 MS. SESSIONS: Yes. She's got the hard copy in
7 front of her. And it looks like the screen is back on.

8 BY MS. SESSIONS:

9 Q So if you see at the bottom of page 1, it says: "To
10 counter the impact of these changes, we decided to
11 deprioritize AdX in the ad stack, allowing other SSPs to
12 have a first look where we can control the auction more
13 efficiently"; do you see that?

14 A Yes.

15 Q And that's what News Corp did in this analysis?

16 A Yes.

17 Q Okay. And News Corp performed this analysis using the
18 DFP ad server; right?

19 A Yes.

20 Q So the other SSPs had a first look ahead of AdX in DFP?

21 A Yes.

22 Q So the way this experiment was set up was that Google
23 AdX was not allowed to compete if other SSPs had bids for an
24 impression; right?

25 A So it moved the first look functionality -- or the last

1 look functionality out of Google and allowed the other
2 exchanges to have first look.

3 Q And at page 3 of exhibit -- Defense Exhibit 355, News
4 Corp looks at the SSPs that benefited from deprioritizing
5 AdX. Do you see that in the second paragraph under results
6 analysis?

7 A Yes.

8 Q Okay. And one of the SSPs that benefited from
9 deprioritizing AdX was Amazon's Transparent Ad Marketplace?

10 A Yes.

11 Q And another SSP that benefited from News Corp
12 deprioritizing AdX was Facebook AN; do you see that?

13 A Yes.

14 Q And that's Facebook's Audience Network?

15 A It was.

16 Q And so that means that News UK was working with
17 Facebook as an SSP at this time?

18 A At the time.

19 Q And then AppNexus also benefited from deprioritizing
20 AdX; right?

21 A Yes.

22 Q And AppNexus is Xandr?

23 A Yes.

24 Q And then Index Exchange also benefited from News Corp
25 deprioritizing AdX?

1 A Yes.

2 Q So if you go to page 4 of this document, this -- page 4
3 includes News Corp's conclusion; right?

4 A The third paragraph? The -- yeah.

5 Q The whole page has the conclusion.

6 A Yes. Yes.

7 Q And if you look at the middle paragraph, News Corp
8 concluded that the strategy of deprioritization caused it no
9 noticeable revenue loss; do you see that?

10 A Yes. But I also see that it says: "It remains to be
11 seen how the bidding behavior changes when first price
12 auction comes into force."

13 So I was --

14 Q That's why I was asking you the question about the
15 before and after with the first-price auction because I
16 wanted to know for myself.

17 But my question is about this -- the conclusion.
18 And so you see that the strategy of deprioritization caused
19 News Corp no noticeable revenue loss; correct?

20 A Yes.

21 Q Okay. And so when News Corp set up its DFP ad server
22 to deprioritize AdX and let other SSPs have a first look
23 over AdX, that caused News Corp no noticeable revenue loss?

24 A Yes.

25 Q I'd like to talk for a minute about Uniform Pricing

1 Rules.

2 So Uniform Pricing Rules --

3 A Unified. Unified.

4 Q We can call them unified. That's fine. I think people
5 call them both things, but I'll call them unified.

6 Unified Pricing Rules meant that the same price
7 floor was going to apply to all programmatic buyers in DFP;
8 right?

9 A All right. Did we switch in the -- what was the number
10 that I needed to go to?

11 Q We're not --

12 A We're not in the binder? Are we out of the binder?
13 Okay.

14 Q You can put that aside.

15 A Okay.

16 Q So keep it with you. We might look at it again, but
17 you don't have to look at the document right now.

18 So the Uniform Pricing Rules meant that the same
19 floor price applied to all programmatic buyers in DFP;
20 right?

21 A In DFP, yes.

22 Q Okay. And you wanted to set price floors higher for
23 AdX than for other exchanges?

24 A Yes, because they had an informational advantage.

25 Q You've characterized this as wanting to set specific

1 rules against AdWords; right?

2 A Specific rules for AdWords.

3 Q Specific rules against AdWords, is my question.

4 A I wouldn't categorize it as against, but you're setting
5 floors for -- specific floors for AdWords.

6 Q Okay. If you could turn to page -- tab 25 of your
7 binder, please.

8 Tab 25 contains a transcript that has been marked
9 as Plaintiffs' Exhibit 1854. I am not seeking to move this
10 transcript into evidence at this time, but for your
11 reference, that's what the document is.

12 And, Ms. Layser, if you could please turn to
13 page 37 of that transcript. You see at page 37 of that
14 transcript starting on line 10, there's a statement from
15 you; do you see that?

16 A Yes.

17 Q Okay. And at the -- at line 19 at the end of that
18 statement, you say: "So it's a little bit concerning to me
19 that we won't be able to set specific -- specific rules
20 against AdWords"; do you see that?

21 A Yes.

22 Q And did you say that?

23 A Yes.

24 Q You wanted to set specific rules against AdWords
25 because doing that would eat away at Google's margin;

1 correct?

2 A Yes.

3 Q Okay. You acknowledge that setting a higher price
4 floor for AdX wasn't about making publishers more money?

5 A When you eat away at the margin, it makes publishers
6 more money.

7 Q So it's your testimony that it was about making
8 publishers more money?

9 A Yeah. We set AdWords higher -- we set AdWords' prices
10 higher because we wanted to make publishers more money.

11 Q All right. Let's turn now to page 102 of this same
12 transcript in the binder.

13 And do you see there's a statement on page 102
14 beginning at line 7 from you?

15 A Yes.

16 Q Okay. And sort of in the middle of that statement, you
17 say: "I think the -- the big rub or the thing that we're
18 most frustrated about is the idea that we -- we -- maybe
19 it -- the flooring doesn't have to do with pure yield.
20 Maybe it has to do with business rules that we need in this
21 organization or things that might not just optimize yield,
22 but might be what we need for our own business"; do you see
23 that?

24 A Yes.

25 Q And did you say that?

1 A Yes.

2 Q Okay. And when you say "the flooring doesn't have to
3 do with pure yield," you mean the flooring doesn't have to
4 do with purely making more money?

5 A Yes.

6 Q Okay. Now, the reason that you wanted to eat away at
7 Google's margin and set higher price floors for AdX was
8 because Google Ads or AdWords runs an auction before the
9 bids go into AdX; is that right?

10 A Yes.

11 Q Google wasn't the only bidder that ran its own auction
12 before bidding into an SSP; right?

13 A I don't know.

14 Q If you can go back to page -- to tab 22 in your binder
15 there. And this is Defense Exhibit 655, which is already in
16 evidence. And if you could turn now just to the first page
17 of this document, and I want to direct your attention to the
18 second arrow under background. And your screen is off, so
19 you're going to have to look at it on the paper.

20 A 22?

21 Q You see the line that says "the concern is"?

22 A The line that says "the concern."

23 Q Under background, second arrow begins "the concern is."

24 A Okay. I am on page 22.

25 Q You're on page 1 of tab 22 in your binder? It's up on

1 your screen now, too.

2 A Oh, God.

3 Q You see that, it says: "The concern is that many
4 buyers, such as Criteo or Google AdWords, are holding
5 internal second-price auctions within their system."

6 So as a part of this analysis of setting up the ad
7 server to deprioritize AdX, News Corp observed that Criteo
8 was also running an auction before it was bidding into SSPs?

9 A Yes.

10 THE COURT: At this point, it's 11:00. We
11 normally take a break around now. We'll be on a 20-minute
12 break until 11:20. All right.

13 (A recess was taken.)

14 MS. SESSIONS: May I proceed, Your Honor?

15 THE COURT: Yes, ma'am.

16 BY MS. SESSIONS:

17 Q Ms. Layser, before we broke, we were discussing Uniform
18 Pricing Rules; do you recall that?

19 A Unified Pricing Rules.

20 THE COURT: It's the same thing, folks.

21 BY MS. SESSIONS:

22 Q We're going to agree to disagree.

23 A Okay. Sorry. I just wanted to make sure that I was
24 doing it right.

25 Q After these pricing rules, there were still

1 work-arounds that publishers could enable to make AdX clear
2 a higher price floor; right?

3 A There was one that I was familiar with.

4 Q So one work-around could be that a publisher would take
5 its bids in from header bidding or from Prebid and then
6 boost that price that came from header bidding and put a
7 higher price into the ad server; right?

8 A Yes.

9 Q Okay. And --

10 MS. SESSIONS: Could we please put up Plaintiffs'
11 Demonstrative H, please. It will hopefully appear on your
12 screen. There you go.

13 BY MS. SESSIONS:

14 Q Ms. Layser, what you're seeing on your screen here is
15 Plaintiffs' Demonstrative H.

16 So if you see in this demonstrative, there are
17 bids coming in from OpenX, PubMatic, Index Exchange and
18 Magnite. Those are header bidders coming in there. And
19 then there is \$1.10, it says, coming in from header bidding,
20 and then that's being passed into the ad server; do you see
21 that?

22 A Yes.

23 Q And the work-around that we're talking about is,
24 instead of putting \$1.10 into the ad server as the highest
25 bid coming from header bidding, the publisher could put

1 whatever value that they wanted into that slot and send it
2 into the ad server?

3 A Yes.

4 Q And that was possible to do even before Google's
5 first-price auction; correct?

6 A Yes. Publishers have control over the ...

7 Q Thank you. You can put that aside. Thank you.

8 I want to talk just a little bit more about Prebid
9 and the early days of header bidding.

10 So initially when header bidding started, no SSPs
11 were really ready to participate in Prebid; is that right?

12 A So before Prebid, there were some ad networks that used
13 header-bidding-like functionality but not the model where
14 you could send like a real-time bid into it.

15 Q Okay. And you worked at A+ Publishing in 2016; right?

16 A Yes.

17 Q And you testified that you helped them set up their
18 Prebid implementation; right?

19 A Yes.

20 Q Okay. At that time when you were working at A+ and
21 setting up header bidding with them, Amazon did not want to
22 bid into A+'s Prebid header bidding solution; right?

23 A Yes.

24 Q Okay. And while you worked at News Corp, Amazon still
25 did not bid into Prebid; correct?

1 A Correct.

2 Q And there's today still some companies other than
3 Google that don't bid into Prebid; right?

4 A Yes.

5 Q Now, you agree that it's technically possible to use
6 Google's DFP without calling AdX; right?

7 A Yes.

8 Q Okay. And you'd agree that it's technically possible
9 to use Google's Open Bidding also without calling AdX;
10 right?

11 A Yes.

12 Q And it's technically possible to use AdX without using
13 DFP as your ad server; correct? You can call AdX from an ad
14 server that's not DFP; correct?

15 A It's hard to say now because they're branded as --
16 like, we've been talking about them as DFP and AdX, but now
17 they're branded as being GAM as one, so it's kind of a hard
18 question to answer.

19 Q You can call -- my question is whether you can call AdX
20 from an ad server that is not Google's.

21 A Yes.

22 Q Okay. Great.

23 Now, you have a problem with how AdX would return
24 bids to a non-Google ad server; right?

25 A Yes.

1 Q Okay. And you've characterized that as a problem that
2 Google isn't bidding into other header bidding or
3 server-to-server solutions; correct?

4 A So my problem is that they don't do a real-time price.

5 Q My question is how you've characterized that.

6 You've characterized that as a problem that Google
7 is not bidding into other header bidding or server-to-server
8 solutions; correct?

9 A Yes.

10 Q Okay. And you want Google to bid into other people's
11 auctions; right?

12 A I would like Google to pass the publisher a real-time
13 price.

14 Q You want Google to bid into other header bidding or
15 server-to-server solutions; correct?

16 A I would like them to bid into the open source solution
17 Prebid.

18 Q Okay. You would like them to bid into Prebid.

19 And Google's never bid into Prebid; correct?

20 A You can't get a real-time price out of it, so you can't
21 build an adapter at a publisher if you wanted to.

22 THE COURT: I'm sorry. The question is yes or no.

23 THE WITNESS: Yes. Hold on. Can you ask the
24 question again? I don't know.

25 BY MS. SESSIONS:

1 Q Thank you.

2 Google has never bid into Prebid; correct?

3 A Correct.

4 Q Google's never bid into a third-party header bidding
5 solution; correct?

6 A Correct.

7 Q Okay. You also want Google to contribute AdX to
8 Prebid; right?

9 A Yes.

10 Q And by that you mean make AdX open source and available
11 to everybody for free?

12 A No. No.

13 Q Prebid is an open-source solution; correct?

14 A Yes. It's not making AdX open source.

15 Q But you want Google to contribute AdX to Prebid?

16 A No. It's not contributing AdX to Prebid; it's building
17 an adapter to Prebid.

18 Q Okay. Let's turn to tab 13 in your binder, please.

19 A Okay.

20 Q And tab 13, Ms. Layser, is this a copy of an opinion
21 piece that you wrote in AdExchanger dated --

22 A Yes.

23 Q -- July 12th, 2019?

24 A Yes.

25 Q If you could turn to the last page of this document,

1 which is page 6 of the article. And you see there's a
2 paragraph kind of in the center of the page that says "a
3 first step"; do you see that?

4 A Yes.

5 Q And you wrote: "A first step, relatively easy for
6 Google, would be to contribute AdX to prebid.org, the
7 industry-regulated header bidding solution and first-price
8 auction"; did you write that? Ma'am, did you write that?

9 A I did.

10 Q Okay. You believe that parts of ad tech should be
11 community assets; is that right?

12 A Can you repeat that?

13 Q You believe that parts of ad tech should be community
14 assets?

15 A Yes.

16 Q One thing that you think should be a community asset is
17 real-time bidding; is that right?

18 A Yes.

19 Q And you believe that ad tech community assets should
20 not be run by for-profit companies; is that right?

21 A Do I believe that community assets should not be run by
22 for-profit entities?

23 Q You believe that ad tech community assets should not be
24 run by for-profit companies.

25 A No.

1 Q Okay. Let's turn to page -- tab 27 in your binder,
2 please.

3 Tab 27 is a transcript of a podcast episode that's
4 available online titled: Happens in Ad Ops, Prebid,
5 Identity and Yield with Steph Layser. If you could turn to
6 page 9 of this transcript, please.

7 And if you see on page 9, there's a statement by
8 you, it actually starts on page 8, but I'll direct your
9 attention to page 9 starting at line 2. It says: "And I
10 think there is -- just like I think in areas outside of
11 identity, I think there is a general -- there is a general
12 problem with community assets being things that I believe
13 are community assets being run by companies that are
14 for-profit companies"; right?

15 MR. VERNON: Objection. Improper impeachment.
16 It's not in existence -- it's --

17 (Reporter interrupted for clarification.)

18 THE COURT: Overruled. I think it's adequate
19 impeachment.

20 Go ahead.

21 BY MS. SESSIONS:

22 Q Ms. Layser, did you say that?

23 A I don't remember, but because it's in here, yes.

24 Q You have no reason to believe --

25 A I have no reason to believe I didn't say that.

1 Q Ms. Layser, before joining Amazon --

2 THE COURT: Let me interrupt.

3 What do you actually mean by community assets?

4 You mean open source? What do you mean?

5 THE WITNESS: So I believe that RTB, real-time
6 bidding, is a community asset. I believe that it is a
7 standard that must be set, and it is a protocol that we must
8 follow in the industry.

9 I believe that when -- I believe that when
10 different ad exchanges are competing against each other,
11 they should compete in an open-source fashion, and I believe
12 that the software that runs that should be open source
13 because of the fact that I want to be able to check --

14 THE COURT: I mean, do you think that the
15 exchanges shouldn't be for-profit entities?

16 THE WITNESS: No. I think the exchanges can be
17 for-profit entities. I believe that when you're -- when the
18 exchanges are competing against each other, that -- I
19 believe that it should be -- like the core software should
20 be open source, and that's a community asset. Something
21 that we work on together.

22 THE COURT: Okay.

23 BY MS. SESSIONS:

24 Q Ms. Layser, before you worked at Amazon, you had only
25 ever worked on the publisher side of ad tech; is that right?

1 A Yes.

2 Q And working at Amazon right now, are you focused on the
3 publisher side still?

4 A Yes. I'm focused on the publisher side and ad
5 platforms.

6 Q Okay. You've never worked on the advertiser side of ad
7 tech?

8 A I have not. I have some experience.

9 Q But you --

10 A I have some experience, but I have never --

11 Q You've never worked on the advertiser's side?

12 A Yeah.

13 Q You'd agree that your industry has changed a lot over
14 the last 14 years; right?

15 A Yes.

16 Q You'd agree that your industry moves fast?

17 A Yes.

18 Q And you would agree that Prebid will continue to
19 strengthen the future of the open web?

20 A I hope it will.

21 Q In 2021, you believed that Prebid would continue to
22 strengthen the future of the open web?

23 A I would say in 2021 I would have said that.

24 Q Okay. And Prebid, at least in 2021, had made the
25 advertising ecosystem more competitive; right?

1 A Yes.

2 MS. SESSIONS: Okay. Thank you, Ms. Layser. I
3 have no more questions at this time.

4 THE COURT: All right. Any redirect?

5 MR. VERNON: Yes, Your Honor.

6 REDIRECT EXAMINATION

7 BY MR. VERNON:

8 Q I'm going to try to go in rough order.

9 So earlier counsel for Google asked you about
10 whether certain optimizations were good for News Corp and
11 you said they were in the short term; do you remember that?

12 A Yes.

13 Q What do you mean when you said they were good in the
14 short term?

15 A So oftentimes when we would look at our revenue
16 numbers, for the first month or so we would see a pop in
17 yield and we would see more money, and then after a period
18 of time, it would kind of settle and we would start to see
19 like a slight dip in revenue.

20 Q And I think counsel also asked you whether News Corp
21 competed with Facebook, Google and Amazon; do you remember
22 that?

23 A Yes.

24 Q Have you ever worked for an exchange?

25 A No.

1 Q Were you offering an opinion as to who the main
2 competitors are for AdX or other exchanges?

3 A No.

4 Q Does Facebook even have a competing ad server?

5 A No.

6 Q Does Amazon have a competing ad server?

7 A No.

8 MR. VERNON: Can we move to the Cinderella
9 document, which I think is -- can I ask Google? It was the
10 DTX with the chart at the beginning. I don't remember which
11 tab it was.

12 MS. WOOD: 404.

13 MR. VERNON: Thank you.

14 BY MR. VERNON:

15 Q Let's start with page 1. There's a chart at the
16 bottom; do you see that?

17 A Yes.

18 Q And there's --

19 A Yes.

20 Q There's, I think, six rows.

21 Counsel for Google -- let me ask you about the row
22 that says switching cost. Can you explain what this was
23 intended to show?

24 A So this was intended to show the change management. It
25 would -- that would impact our operations teams to switch

1 from one ad server to the other.

2 Q And why did that matter when you were making this
3 analysis of whether to use Xandr or DFP?

4 A To be able to do it right, it would take us over a year
5 to be able to do it, and it would take -- it would be a
6 distraction for our ad operations team. And like I
7 mentioned before, there was a lot of personnel who had never
8 even used anything outside of DFP before. So training.

9 Q And I think you said to do it right, it would take a
10 year.

11 What are you referring to that it would take a
12 year?

13 A To switch from DFP on to AppNexus or Xandr's ad server.

14 Q If you look at the next row, it says revenue risk on
15 the left.

16 Can you explain what this was intended to convey?

17 A Yes. We were -- we ran an analysis with the
18 information that we had to decide what the revenue risk was,
19 and it was an eight-figure impact on our businesses if we
20 were to switch ad servers.

21 Q If you could turn to page 2. At the bottom, the very
22 last bullet point says: "AppNexus is the only real
23 alternative to the Google publisher product suite offering a
24 partial hedge on Google's power and influence"; do you see
25 that?

1 A Yes.

2 Q What does this mean?

3 A We felt as though our only option was to possibly move
4 to AppNexus, AppNexus's publisher ad server, because we
5 wanted to, like, decrease reliance on Google.

6 Q Why were there no other options other than potentially
7 AppNexus?

8 A We didn't find any other publisher ad servers that we
9 thought, like, were close enough to even evaluate other than
10 AppNexus.

11 Q And why were you concerned about Google's power and
12 influence?

13 A It felt -- it felt then at that moment in time that
14 they were already beginning to make product decisions that
15 were outside of the best interests of us and our business,
16 and we wanted to make sure we could still innovate, we
17 wanted to make sure we could still develop, and that is
18 why -- yeah. That is why we were seeking other options.

19 Q Counsel also asked you whether you were able to use
20 Xandr as leverage to get a lower price; do you remember
21 that?

22 A Yes.

23 Q Were you -- was News Corp able to use Xandr as leverage
24 to get Google to eliminate UPR?

25 A No.

1 Q Why not?

2 A Because we asked them -- we didn't want UPR, we
3 complained about UPR. But when product features happen in
4 DFP, you just take them. You have to take them.

5 Q Why do you have to take them?

6 A Because otherwise, there is no really other option.

7 Q What about Facebook? Why couldn't you use Facebook as
8 leverage to get Google to eliminate UPR?

9 A Because they don't have a publisher ad server.

10 Q Was Google able -- I'm sorry.

11 Was News Corp able to use Xandr as leverage to get
12 Google to give News Corp the log-level data that you wanted?

13 A No.

14 Q Why not?

15 A Because it's a product feature, and we have to take the
16 product features that DFP gives us.

17 Q Let's turn to page 11. It's titled revenue risk.

18 And this -- there is a chart here that's an
19 analysis of how much revenue News Corp could lose if it
20 switched ad servers; is that right?

21 A Yes.

22 Q When my colleague asked you some questions, you
23 characterized this analysis as conservative; do you remember
24 that?

25 A Yes.

1 Q Why did you say it was conservative?

2 A I did not have enough clarity on the mechanics of the
3 ad server and AdX together to be able to do an accurate
4 analysis that I felt 100 percent confident in.

5 Q Did you think it was more likely that this analysis
6 understated or overstated the amount of --

7 MS. SESSIONS: Objection, Your Honor. Leading.

8 THE COURT: Counsel, you do need to be on your
9 feet when you're objecting.

10 MS. SESSIONS: I'm sorry, Your Honor. Objection.
11 Leading.

12 THE COURT: I'll sustain the objection.

13 Go ahead.

14 BY MR. VERNON:

15 Q What is DV360?

16 A DV360 is Google's DSP demand-side platform.

17 Q What if -- what effect would switching away from DFP
18 have on the revenue that News Corp gets from DV360 through
19 AdX?

20 A It was unknown at the time.

21 Q Does this chart incorporate potential revenue loss that
22 News Corp could receive from DV360 if it switched away?

23 A No.

24 Q One of the things that you mentioned when counsel was
25 asking you about this document, you said that outside of the

1 U.S., News Corp's business units had a lower percentage of
2 their revenue coming from Google Ads; do you remember that?

3 A Yes.

4 Q Why did you say that?

5 A Because most of the time, European publishers have a
6 lower percentage of Google Ads demand. There's less Google
7 Ads demand in Europe than there typically is in the U.S.

8 Q And how does that affect whether News Corp's U.S.
9 publishing business units could switch away from DFP?

10 A They have a higher reliance on Google.

11 Q What concern, if any, did you have that switching away
12 from DFP could cause News Corp to lose revenue from DV360?

13 A I did have a concern about that.

14 Q I'm sorry. You said you did or you did not?

15 A I did have a concern about that, yeah.

16 Q One of the things that counsel asked you about was
17 whether you -- whether News Corp had log-level data showing
18 whether advertisers who bid on Google Ads also bid
19 elsewhere; do you remember that?

20 A Yes.

21 Q And if you look at the second bullet point, line 3, it
22 says -- I'm sorry, starting at line 2: "While we would
23 retain some access to AdWords demand if we switched away
24 from DFP to AppNexus for ad serving, we would likely face a
25 severe drop"; do you see that?

1 A Yes.

2 Q Why were you concerned about facing a severe drop in
3 revenue even though it's at least possible that some
4 advertisers use both Google Ads and other buying tools?

5 A It was hard to know exactly how much Google AdWords --
6 like, I had heard in the industry that --

7 MS. SESSIONS: Objection, Your Honor.

8 THE COURT: This is not being offered for the
9 truth if she's explaining. So I'll permit it. Overruled.

10 THE WITNESS: So I had heard in the industry that
11 Google AdWords, that you could only get retargeting budgets
12 through other SSPs, that there was a significant amount of
13 unique demand that was specifically in AdX. And so my risk
14 in switching, I was worried -- I didn't know exactly how
15 much it would be, and I couldn't really run an analysis that
16 was much better because I didn't have access to my logs to
17 be able to do that, and I didn't know the behavior exactly
18 on the Google side of how they would treat a two-ad-server
19 system versus running through DFP. Right. It was a risk.
20 And so from my perspective -- sorry. I lost the question.

21 BY MR. VERNON:

22 Q Yeah. I think the question was: Why were you
23 concerned about losing revenue from Google Ads, even though
24 you didn't have access to data about whether a specific
25 Google Ads advertiser could also be buying ads through some

1 other DSP or network?

2 A I just didn't know what percentage we would be able to
3 retain.

4 Q Counsel also asked you -- I think if you look at the
5 bottom of this table where it says total; do you see that?

6 A Yes.

7 Q I think this indicates that approximately 42 percent of
8 News Corp's programmatic revenue for that year came from
9 AdX; is that right? I'm sorry. 42 percent -- 53 percent
10 came from AdX; is that right?

11 A Yes.

12 Q And 42 percent of the AdX came from AdWords; is that
13 right?

14 A Yes.

15 Q So this shows that not -- it's not true that
16 100 percent of News Corp's revenue -- programmatic revenue
17 came from Google Ads; correct?

18 A Correct.

19 Q Why were you concerned about losing access to Google
20 Ads' revenue, even though it wasn't 100 percent of your
21 programmatic revenue?

22 A Because every bit of money counts in publishing.

23 Q And why does every bit of money count in publishing?

24 A Because we have to hire journalists, we have to hire --
25 like, we have to make the best possible products, we have to

1 hire engineers, technologists, all of the people that invest
2 in your business. So when advertising is a massive revenue
3 stream, you've got to hold onto it, and you've got to
4 maximize it as well as you can.

5 Q Counsel also asked you about some other competitors
6 like Nativo; do you remember that?

7 A Yes.

8 Q What percentage of News Corp's revenue comes from
9 Nativo?

10 A I don't know, but very small.

11 Q And I think counsel also asked you about TripleLift, if
12 I remember correctly.

13 A Yeah.

14 Q What percentage comes from TripleLift?

15 A A small amount.

16 Q Is there any other ad tech provider that comes even
17 close to the 53 percent that came from AdX at this time?

18 A No. And this is 2016. It grew over the time that I
19 was at News Corp.

20 Q What grew?

21 A The amount that went to AdX.

22 Q Counsel also asked you about an email exchange with
23 Defy Media; do you remember that?

24 A Yes.

25 Q And Defy Media described itself as having unique

1 demand; do you remember that?

2 A Yes.

3 Q And, again, which company has the largest pool of
4 unique demand in programmatic display?

5 A Google Ads.

6 Q How does Defy Media's unique demand compare to Google
7 Ads?

8 A I'm not even sure if Defy Media has unique demand.

9 Q Why weren't you interested in integrating with Defy?

10 A I had previously -- from that email I had had previous
11 experience with Defy Media, and the technology, there was a
12 big discrepancy. Remember, I talked about losing
13 impressions meant lost revenue. There was a big discrepancy
14 in lost impressions when they went to Defy Media, and I
15 didn't want to run the risk of losing those impressions.

16 Q Can you please turn to tab 22 in your binder. It's the
17 document titled "Deprioritizing the Google Ad Exchange."
18 Are you ready?

19 A Yeah.

20 Q This document talked about using key values to block
21 AdX from bidding when either TAM or Prebid bid; is that
22 right?

23 A Yes.

24 Q And what are TAM and Prebid?

25 A Header bidding solutions.

1 Q So was this document -- counsel asked you about whether
2 this document said you could give exchanges other than AdX a
3 first look; do you remember that?

4 A Yes.

5 Q Was this document talking about using this blocking
6 system after the emergence of header bidding or before the
7 emergence of header bidding?

8 A This was about the blocking after -- like after header
9 bidding.

10 Q Does this document say anything about whether News Corp
11 could -- I'll move on.

12 I think you also said when you were discussing
13 this document that you thought that this experiment was run
14 before the shift to the Unified First Price Auction; is that
15 right?

16 A Yes.

17 Q How much did News Corp use this system that News Corp
18 tested in this experiment after the experiment ended?

19 A We did not.

20 Q Why did News Corp not use this system for blocking AdX
21 after the experiment ended?

22 A So after the Unified Pricing Rules went out, we noticed
23 the behavior in AdX. Google Ads was bidding one to two
24 pennies above, but the non-Google DSPs were -- like, were
25 adding more revenue through AdX. And so it was a high --

1 like a higher risk after the Unified Pricing Rules for us to
2 implement this experiment.

3 Q And so by the time you left News Corp, what percentage,
4 ballpark, of News Corp's programmatic revenue came from AdX?

5 A I believe it was between, like, 70 and 80 percent.

6 Q And so News Corp did not use this system to reduce that
7 percentage, at least -- you're right. I'll move on.

8 Counsel also asked you about FAN in connection
9 with this document; do you remember that?

10 A Yes.

11 Q What was FAN?

12 A It was Facebook Audience Network.

13 Q To what extent does Facebook Audience Network buy
14 open-web display inventory today?

15 A It does not.

16 Q You can set that document aside.

17 Counsel -- I'm sorry.

18 A minute ago you said there would be higher risk
19 to implementing this deprioritizing system today; do you
20 remember that?

21 A Yes.

22 Q Can you just explain why that is?

23 A So we were seeing the impressions that header bidding
24 bid on through AdX non-Google DSPs, that they were adding
25 incremental revenue value. So after Unified Pricing Rules,

1 we were worried that if we implemented this experiment, that
2 we would lose revenue. And because Unified Pricing Rules
3 made it so that you couldn't set different floors for
4 different buyers, I couldn't set Google -- like, we couldn't
5 set Google AdWords. Like, we couldn't set a rule that said,
6 okay, Google AdWords, you know, if Prebid or TAM responds,
7 you know, Google AdWords is blocked. Like, that ability was
8 done after Unified Pricing Rules.

9 Q You mentioned I think on -- during questions by my
10 colleague that News Corp wanted to floor Google Ads higher
11 than other networks or DSPs; do you remember that?

12 A Yes.

13 Q Why did you want to do that?

14 A So one of the reasons was what we talked about before,
15 was that it helped make publishers more revenue. But
16 another reason that we sometimes did higher floors for
17 certain exchanges was if, like, fraud, malware, something
18 bad was coming through, they usually buy like through kind
19 of the bottom. Right. So low CPMs. They usually buy low
20 CPMs. So if you set the floor a little bit higher, it helps
21 with ad quality.

22 Q What impact did UPR have on News Corp's ability to set
23 a higher floor for Google Ads as compared to other DSPs or
24 other networks?

25 A So you couldn't set a higher floor for AdX, but you

1 could go into a competing SSP, and you could set higher
2 floors in their system.

3 Q Counsel for Google also asked you about what they call
4 the UPR work-around; do you remember that?

5 A Yes.

6 Q They asked you about whether a publisher could boost
7 the header bidding price; do you remember that?

8 A Yes.

9 Q How often did you do this when you were working at any
10 of your publishers?

11 A I did not do this.

12 Q And how many publishers did you work for or consult
13 with again?

14 A It was between 75 and 80.

15 Q Why did you never do this header bidding boost across
16 any of your 75 to 80 publishers?

17 A So your ad server is your source of truth for your
18 revenue. So you would have, like, an order management
19 system, you would have all these downstream systems,
20 reporting analytics, et cetera. If you start doing bid
21 inflation, you have to, like, normalize that data across all
22 of the rest of those systems. So operationally, if you're
23 like a premium publisher, it's difficult to do.

24 Q Counsel for Google also asked you whether it was
25 technically possible to turn off AdX within DFP; do you

1 remember that?

2 A Yes.

3 Q Realistically, did you think that any of the publishers
4 that you worked for actually could have decided to, in
5 practice, not call AdX?

6 A So you could, but you would lose a lot of money.

7 Q Why do you say that?

8 A Because AdX was, you know -- we looked, it was
9 53 percent of our revenue in 2016 at News Corp. Turning off
10 AdX is -- that's a lot of revenue. And then the unique
11 demand is Google Ads, which was 18 million. So you would
12 also have to consider that.

13 Q Counsel also asked you about contributing to Prebid; do
14 you remember that?

15 A Yes.

16 Q What did you mean when you said "contribute to Prebid"?

17 A So what I meant was, I wanted AdX to build an adapter
18 in Prebid. So an adapter, just AdX would put out a
19 real-time price. And, actually, Google wouldn't even have
20 to build an adapter; they would just have to give a
21 real-time price. A publisher could build an adapter if they
22 were given a real-time price, or a publisher could do their
23 own proprietary header bidding solution or anything like
24 that. But what we wanted was a real-time price so that we
25 could use it for any downstream systems, different

1 decisioning so that we had control over our inventory and
2 how it was monetized.

3 Q Were you saying that Google should be required to
4 donate AdX to an open-source company?

5 A No.

6 Q What were you saying?

7 A I was saying that I wanted them to build -- like, I
8 wanted them to deliver out a real-time price so publishers
9 could use it.

10 Q Let's turn to tab 13 in your binder. And if you could
11 go to the last page, it's I think page 6, the page that
12 counsel was asking you about. And there's a subtitle that
13 says "a possible solution"; do you see that?

14 A Yes.

15 Q If you look at line 2, you write: "In a perfect world,
16 I believe DFP and AdX" --

17 MS. SESSIONS: Your Honor, this is -- this is
18 hearsay. We used this document purely for impeachment
19 purposes. It's not in evidence.

20 MR. VERNON: We're not using this for the truth;
21 we're using this to respond to counsel asking questions
22 about the very next paragraph.

23 THE COURT: Yeah. It's redirect. I'm permitting
24 it. Overruled.

25 BY MR. VERNON:

1 Q You wrote: "In a perfect world, I believe DFP and AdX
2 should be two separate products"; do you see that?

3 A Yes.

4 Q Why did you believe that?

5 A Because I believed if they're decoupled, that
6 publishers would have more choice.

7 Q Why do you believe if AdX and DFP were decoupled,
8 publishers would have more choice?

9 A Because then publishers would be able to take the
10 real-time price from AdX, and they would be able to use a
11 different publisher ad server.

12 Q And why would having more choice in publisher ad
13 servers be good for you when you were working at News Corp?

14 A I could use a publisher ad server that had my best
15 interests in mind and innovated on behalf of me.

16 Q I think one of the things that you said when counsel
17 was asking you questions about this was you said when
18 exchanges are competing against each other, I want something
19 to be managing that competition that is open source; do you
20 remember that?

21 A Yes.

22 Q What led you to that belief that you thought the thing
23 that should be managing competition between exchanges should
24 be open source?

25 A Because I wanted it to be fair.

1 Q And what had you seen in the past that made you think
2 that was important?

3 A I had seen auction mechanics that were unfair and ones
4 that didn't benefit publishers, and I wanted publishers to
5 be able to control their own inventory.

6 Q And whose auctioning mechanics were those?

7 A Google's.

8 Q And which ones are you talking about?

9 A I'm talking about Dynamic Allocation, I'm talking about
10 Unified Pricing Rules, I'm talking about every single
11 product features that they shoved down our throats over the
12 course of time that we were using DFP.

13 Q Counsel also asked you if the industry is changing a
14 lot; do you remember that?

15 A Yes.

16 Q And whether it was moving fast?

17 A Yes.

18 Q Has any -- what was the percentage of your programmatic
19 revenue that you got at News Corp at the end of your tenure
20 there, ballpark?

21 A Can you repeat the question?

22 Q As of the time you left News Corp, what percentage of
23 News Corp's programmatic revenue came from AdX?

24 A It was between 70 and 80 percent.

25 Q So did anything change during your tenure at News Corp

1 in the industry that reduced the percentage of revenue that
2 News Corp got from AdX?

3 A No.

4 Q What publisher ad server did you use when you worked
5 for your first publisher in, I think it was 2010?

6 A DFP.

7 Q And what publisher ad server did you use at the end of
8 your tenure at News Corp?

9 A DFP.

10 Q Did anything change in the fast-moving industry about
11 whether the publishers that you worked for were reliant on
12 DFP?

13 A No. They became more reliant.

14 Q Why did they become more reliant over time?

15 A More AdX demand. More AdWords demand.

16 Q Let me ask you just to explain a little bit about how
17 UPR works.

18 Who sets the price floor?

19 A Publishers.

20 Q And what does UPR do to the price floor that publishers
21 set?

22 A It shuts off all the line items that are below the
23 price point that you put in. So basically if you set up a
24 unified -- like in your network line items, if you set a
25 unified price floor of \$3, any of the line items that are

1 below that, like, don't -- they're not part of the
2 decisioning.

3 Q What effect did UPR have on News Corp's ability to set
4 a high price floor for AdX than for other exchanges?

5 A You could not set a higher price floor for AdX versus
6 other exchanges.

7 Q And why did you want to set a higher price floor for
8 AdX compared to other exchanges?

9 A To make more money, to manage ad quality.

10 MR. VERNON: I pass the witness.

11 THE COURT: Any recross?

12 MS. SESSIONS: Very briefly, Your Honor.

13 RECROSS EXAMINATION

14 BY MS. SESSIONS:

15 Q Ms. Layser, I believe you were -- you were just asked
16 about what led you to want to have an open-source solution
17 for the industry; do you recall that?

18 A Yes.

19 Q And you mentioned some things that you thought were
20 unfair that caused you to want that --

21 A Yes.

22 Q -- right?

23 One of those was Uniform Pricing Rules?

24 A Yes. UPR.

25 Q Uniform Pricing Rules came out many years after Prebid

1 was started; right?

2 A Yeah. Prebid was started in, like, '15/'16, and then
3 '19 was Unified Pricing Rules.

4 Q And just one last set of questions.

5 We, together, looked at an analysis that News Corp
6 did of deprioritizing AdX; do you recall that?

7 A Yes.

8 Q Okay. And in that analysis, News Corp concluded that
9 when it deprioritized AdX, it experienced no noticeable
10 revenue loss; correct?

11 A Correct.

12 MS. SESSIONS: Okay. Thank you. No further
13 questions, Your Honor.

14 THE COURT: All right. Does anybody anticipate
15 calling Ms. Layser again?

16 MR. VERNON: Yes, Your Honor. And I apologize to
17 Ms. Layser. We do want to preserve the option to call her
18 in rebuttal.

19 THE COURT: All right. Well, Ms. Layser, we're
20 not going to get back to you for a couple of days anyway, so
21 just stay in touch, keep your communications open.

22 You cannot watch any of the proceedings then, and
23 you're not to discuss your testimony with any witness who
24 has not yet testified. But you're free to go at this point.
25 Make sure you give us back the witness badge if you have it.

1 All right.

2 THE WITNESS: Okay.

3 (Witness excused at 12:02 p.m.)

4 THE COURT: All right. Call your next witness.

5 MS. CLEMONS: Your Honor, my name is

6 Katherine Clemons, and plaintiffs call Jay Friedman.

7 THE COURT: All right.

8 THE DEPUTY CLERK: Can you raise your right hand.

9 Thereupon,

10 JAY FRIEDMAN,

11 having been called as a witness on behalf of the plaintiffs

12 and having been first duly sworn by the Deputy Clerk, was

13 examined and testified as follows:

14 (Time noted: 12:03 p.m.)

15 THE DEPUTY CLERK: Thank you.

16 THE COURT: Do we have the notebooks?

17 MS. CLEMONS: No exhibits.

18 THE COURT: No exhibits. All right.

19 DIRECT EXAMINATION

20 BY MS. CLEMONS:

21 Q Mr. Friedman, can you please state your full name for
22 the record.

23 A Jay Michael Friedman.

24 THE COURT: Mr. Friedman, you need to move in, and
25 that black bar is the microphone.

1 THE WITNESS: Jay Michael Friedman.

2 BY MS. CLEMONS:

3 Q And where are you employed, Mr. Friedman?

4 A Goodway Group.

5 Q How long have you worked at the Goodway Group?

6 A Just over 18 years.

7 Q And what is your current title?

8 A CEO.

9 Q Can you explain to the Court what kind of business
10 Goodway Group is?

11 A Yes. Goodway Group is a marketing services firm. We
12 handle everything from traditional advertising, agency
13 services, to marketing consulting.

14 Q And how long have you been with Goodway Group?

15 A Eighteen years.

16 Q Does Goodway Group have a particular focus within
17 advertising?

18 A Yes. I would say we primarily consult, advise and do
19 media around digital media specifically.

20 Q And when did you join Goodway Group?

21 A June 2006.

22 Q And when you joined in June of 2006, did Goodway Group
23 have a particular focus on digital media?

24 A No. There was no digital media.

25 Q And so why did you join Goodway Group?

1 A Because I saw the potential -- I saw the potential in
2 digital media to be a really important part of marketers'
3 plans of the future, and so as a result, I joined to --
4 because I thought that they had a good foundation of
5 marketing knowledge, but to help evolve and create a digital
6 media practice.

7 Q And since joining Goodway Group, what role have you
8 played in development of their digital media business?

9 A I was the primary architect of the digital media
10 business.

11 Q What types of services specifically does Goodway
12 provide with respect to advertising and digital media to
13 your clients?

14 A Everything from analytics, I would say research for the
15 sake of analytics, media planning, media buying, strategy,
16 strategic consulting.

17 Q And who are Goodway's customers?

18 A Goodway has a variety of customers because we have five
19 brands that go to market. So everything from very, very
20 large enterprises, global enterprises, down to local or
21 regional brands, and there are a number of ad agencies that
22 use Goodway's services as well.

23 Q And what do ad agencies typically use Goodway's
24 services to do?

25 A Primarily it's media buying. It's much more rare that

1 it's media planning.

2 Q Okay. And when Goodway is doing media planning for an
3 advertiser client, do you break down digital advertising
4 into media channels?

5 A We do.

6 Q And what are the typical media channels that Goodway
7 uses when you're doing media planning?

8 A I would say connected TV, streaming audio, social
9 search, display, native from time to time, mobile in app,
10 potentially. Sometimes that's merged; sometimes that's not.
11 I think those are the major ones.

12 Q And how many channels does Goodway typically recommend
13 a client use?

14 A That completely depends on a budget objective. That's
15 hard to say, but I would say -- I mean, if you're asking for
16 an average, maybe four to five in a plan.

17 Q Does Goodway typically recommend that a client use only
18 a single channel in an advertising campaign?

19 A Not unless the budget is exceptionally small.

20 Q And why would Goodway recommend using more than one
21 channel?

22 A Because consumers consume multiple channels of media,
23 and it's proven through our own data that when consumers are
24 exposed to messages in more than one channel, they have a
25 higher likelihood of engaging with and/or buying the

1 product.

2 Q And do you use the concept of a marketing funnel in
3 your business at Goodway?

4 A Yes. Yes. In general, yes.

5 Q And do particular channels, the channels that you
6 mentioned, do they have a specific place where they sit in
7 the marketing funnel?

8 A So what I would say is that there's no channel that
9 will sit exclusively in one area of the funnel necessarily.
10 Search tends to be lower funnel, meaning that that is where
11 consumers have already narrowed their decisions -- that's
12 why the shape of the funnel -- have narrowed their decision
13 down to a very -- to a much smaller group. So search may
14 tend to be at the bottom of the funnel. And then social may
15 be as well. But even connected TV, which is traditionally
16 viewed as upper funnel, can be used as lower funnel, it just
17 depends on the message and the application.

18 Q And so could you, at a high level, sort of walk us
19 through what Goodway does for an advertiser client who is
20 looking to plan an advertising campaign?

21 A Yeah. So we break it down into three stages:
22 Discover, design, deliver. So in discover, we seek -- we do
23 research, and we seek insights about the market and the
24 marketer, about the brand, and then the consumers that do or
25 don't buy that brand. Once we have the nuggets of insight

1 that we believe will drive the strategy, we do design, which
2 is media planning and channel planning and campaign design.
3 And then once we have that, we move on to deliver, which is
4 to execute that plan, which would be media buying, and then
5 analytics which essentially restarts the process back to
6 discover.

7 Q And you mentioned media planning and channel planning.

8 Are those different things or the same thing?

9 A Yeah. I would say -- I would say media planning is a
10 broader bucket. Channel planning is a little bit more
11 specific to specifically which channels. Media planning can
12 and likely includes the concept or the consideration for
13 creative messaging.

14 Q You mentioned display advertising earlier.

15 What is your -- what is Goodway's understanding of
16 what constitutes display advertising?

17 A Display advertising in general tends to be -- to
18 simplify it, I guess, you know, squares and rectangles or
19 whatever it may be on web pages, potentially in mobile apps,
20 but they tend to be fixed ad slots. I don't want to use
21 industry jargon if that's not helpful. But they tend to be
22 fixed slots on web pages or apps.

23 Q And what kind of media goes into those fixed slots?

24 A Display ads? I mean, they're banner ads, so they could
25 be static or they could have some motion to them, but

1 generally not video.

2 Q Can video go into a display unit?

3 A It can.

4 Q And if video is in a display unit, would you consider
5 that to be a video ad or a display ad or something else?

6 A That tends to be called -- that tends to be grouped
7 into online video, but I don't know. It's -- it's largely
8 recommended against running in banner video just because
9 there's -- that's not what the banner slot was built for.

10 Q Are you familiar with the terms instream and outstream
11 as they relate to video advertising?

12 A Yes.

13 Q Could you explain at a high level what the difference
14 is between instream and outstream?

15 A Yeah. So you go to a web page and you want to watch a
16 video and then there's a player, and in that player is
17 whatever you came to watch. And so instream would be in
18 that player. So as almost part of the video, whether it's
19 before the video, during, or after. Outstream tends to be
20 more as you're reading an article and a space appears, like
21 between paragraphs where it -- where a video then plays.

22 Q And if you're reading an article and a video then
23 plays, is that -- would you consider that to be display
24 advertising?

25 A No. The way outstream is typically done is there

1 otherwise was not a fixed slot or a fixed space for a banner
2 ad. It literally just, like, separates the paragraphs and
3 creates an ad. A display -- traditional display ad could go
4 there, I guess, but I have not seen that.

5 Q And if there is motion in a -- in a display ad slot,
6 would you consider that to be video or display?

7 A No. That would be display.

8 Q In Goodway's ordinary course of business, do you
9 distinguish between display advertising on Internet websites
10 generally and display advertising in walled gardens?

11 A Display can be applied in either, but the methodology
12 or the strategy toward buying within a walled garden or
13 outside of a walled garden, that is a decision that's
14 important.

15 Q Can you explain how you typically look at a display
16 advertising across the web in Goodway's business?

17 A Yeah. So we obviously -- we have a target audience, we
18 have an audience or many audiences that we want to see the
19 message. So if -- we're talking just display; correct?

20 Q Yeah. We're talking about display advertising.

21 A Okay. And so we'll have one or many audiences that we
22 want to see an ad and that we want to be exposed to an ad
23 because we believe it will help convince them to buy the
24 product. And then there's a number of different mechanisms
25 through which we can narrow down the list of websites or

1 apps that we will place those ads on in order to minimize
2 waste and maximize the efficiency of the campaign.

3 Q And how do you purchase display advertising on the open
4 Internet?

5 A Almost exclusively -- we try -- we prioritize doing
6 what's called programmatic -- and feel free to stop me if I
7 need to define anything. But we try to prioritize doing
8 things programmatically because it's an automated system
9 that is just simply more efficient.

10 Q And what is programmatically in contrast to in terms of
11 buying display advertising?

12 A Programmatic, it's just an automated way. The opposite
13 of programmatic is manual. And so it's an automated way
14 through software that helps decision on which ad to buy at
15 which time based on budget and the length of the campaign
16 and the audience. But there's a lot of parameters, of
17 course, that go into it from a human perspective.

18 THE COURT: You said earlier there was a
19 difference in strategy between going on the web base versus
20 the walled garden arena.

21 Can you explain that, please.

22 THE WITNESS: Yes. So the walled garden's -- it's
23 using their data inside their properties and whatever they
24 allow access to. And --

25 THE COURT: So it's a more restrictive platform?

1 THE WITNESS: It tends -- I would say more
2 focused. So it could be focused, or it could be
3 restrictive. But, for instance, within Meta, which owns
4 Facebook and Instagram, et cetera, within those, it's
5 generally going to be Meta's data applied to Meta's
6 properties. Within Google, by and large, it's the value of
7 Google's data applied to either Google's properties or the
8 open Internet because Google has a connection with so many
9 web publishers that it does not own.

10 But, for instance, if I wanted to buy YouTube, I
11 can't buy that anywhere but Google because they own that,
12 and that's in their system. If I wanted to buy espn.com, I
13 could buy that in a whole host of places because they don't
14 own their own technology and they choose to work with
15 multiple providers.

16 THE COURT: Thank you.

17 BY MS. CLEMONS:

18 Q And you mentioned YouTube.

19 Is YouTube a walled garden?

20 A I would say it's part of Google's overall property,
21 which is generally considered a walled garden, yes.

22 Q Are there other differences in strategy between how you
23 purchase media in walled gardens versus on the open
24 Internet?

25 A Well, I think one of the main differences and reasons

1 for choosing one or the other is access to data once the
2 campaign is delivering. And through walled gardens, the
3 data tends to be pretty restrictive in terms of what we as
4 an agency can get, and, therefore, mine for insights.

5 Whereas when buying in other -- I guess other tools that are
6 not walled gardens, there tends to be more data available to
7 us, which we can then turn into better insights for our
8 clients.

9 Q When you say data, what kinds of data are you referring
10 to?

11 A So if you're on a web page and an ad comes in, there is
12 a whole host of data that is behind -- that goes with that
13 one ad. What browser were you on. What time of day. What
14 day of week. What website. What the screen size was.
15 There's just -- there's a whole host of technographic data
16 that comes with it.

17 And within walled gardens, it's typically an
18 agency like us can query the data but not start to sort it.
19 It's not provided to us in any raw form, whereas with other
20 tools, we're given -- or enabled to get the raw data and to
21 mine it however we want.

22 Q And do you use the same tools to buy media in walled
23 gardens that you do to buy display media on the open web?

24 A Tool category or exact tool?

25 Q Exact tools.

1 A No. Generally not because within a Google or a Meta or
2 an Amazon, that is -- they only offer a part of the
3 ecosystem.

4 Q And so what type of media, what types of media do you
5 buy using, like, Facebook's advertising tools?

6 A Social because it's social. That's what they are.

7 Q And can you buy display inventory on other websites
8 through Facebook's advertising tools?

9 A I guess technically, yes. As a practice, we don't do
10 that.

11 Q Can you buy Facebook advertising using the tools that
12 you typically use to buy display advertising on the open
13 Internet?

14 A No.

15 Q What tools does Goodway use to buy display advertising?

16 A Primarily it would be -- there's a tool or software
17 called The Trade Desk, and then there's DV360, which is
18 owned by Google.

19 Q And are those both DSPs?

20 A Those are both DSPs.

21 Q Have you heard the term advertiser ad network?

22 A Yes.

23 Q What, in your understanding, is an advertiser ad
24 network?

25 A So an advertiser ad network is essentially a company

1 puts together a group of websites and bundles that and sells
2 that as a group. There's a -- there's an amount of
3 selectability -- if that's a word -- that the advertiser --
4 there's less choice that the advertiser has in where the
5 ad's run and how they run and the decisioning behind when
6 the ad is served then in a DSP.

7 Q And does Goodway use advertiser ad networks to purchase
8 display advertising?

9 A We have some clients that use Google's ad network, but,
10 as a practice, no.

11 Q And why do you use DSPs and not ad networks as a
12 typical ...

13 A It's -- DSP is what I would categorize as a
14 professional tool. So for someone who sees themselves in
15 the profession of advertising -- and there's so much more --
16 there are so many more controls and options, that a smart
17 professional and practitioner will be able to drive better
18 performance for a marketer using a DSP than an ad network.

19 Q And what kinds of controls do you have in a DSP that
20 you wouldn't have in an ad network?

21 A You'll have to forgive me in terms of the fact that I
22 don't log into the interface and select ads and I haven't
23 for a while, but I did at one time.

24 And so I think, for instance, what data is applied
25 behind the user. So selecting -- for instance, I want -- I

1 want new car buyers, and I want to specify what kind of new
2 car buyers I want. You know, one of the examples is I want
3 business-to-business targets, so I want, you know, CEOs in
4 Minnesota, or whatever it is. Typically I can not only
5 select that, but I can also select, okay, and here are the
6 sites that I'm comfortable running on, and, for instance, I
7 don't want to run on Mac or I don't want to run on PC for
8 whatever reason.

9 So there's a lot -- there's -- not literally
10 infinite, but there's significant flexibility, whereas
11 typically with an ad network, some of those controls will be
12 available, but there's simply more opaqueness to the
13 process.

14 Q And why is having that control important in Goodway's
15 business?

16 A The more controls and the more options that are
17 available, the more a professional can essentially
18 manipulate -- or design and ultimately manipulate a
19 campaign, an advertising campaign to deliver on its goals.

20 Q What types of advertisers in your experience might want
21 to use an advertiser ad network instead of a DSP?

22 A The only -- to put it bluntly, it's usually those that
23 can't afford the minimums or their budgets are too small to
24 get the benefit of the advanced and additional controls.

25 Q Have you heard the term frequency capping?

1 A I sure have.

2 Q Could you tell the Court what frequency capping is?

3 A Yeah. So if we're going to run an ad for XYZ
4 Corporation, typically we don't want any single user to see
5 an ad more than X number of times either per day or per week
6 or for the life of the campaign, because at some point,
7 there's just no value in that anymore if someone's going to
8 buy or they're not. Yeah, so that's frequency capping.

9 Q And is frequency capping something you consider when
10 planning and executing ad campaigns on behalf of the
11 clients?

12 A Absolutely.

13 Q And why is frequency capping something that is part of
14 what you're considering when running a campaign?

15 A We've done significant amounts of research around
16 frequency curves and the value that is delivered back to a
17 marketer where the -- when an appropriate amount of
18 frequency is achieved within a campaign. And that varies by
19 marketer, by the way.

20 Q And is frequency capping something that you do in a DSP
21 or other tools?

22 A Yes.

23 Q To your knowledge, are you able to do the same kind of
24 frequency capping within an advertiser ad network?

25 A Typically it's not in our control. Typically we're

1 told that it is done to the ad network's standards, whatever
2 those standards may be.

3 THE COURT: Well, wouldn't the pricing be
4 different? I mean, if you say I'm going to place an ad for,
5 you know, a new car and I don't want it to appear more than
6 three times, that's three hits. Versus if they're going to
7 have it appear ten times, I would assume you would pay more
8 for the ten than for the three.

9 THE WITNESS: Proportionally, exactly. And that's
10 why for any brand -- so for one brand, it might be that
11 seven is the right number in a month. For another brand it
12 might be 12. And that's just based on response curves. And
13 so -- but if 12 is your right number, then 18 is a waste of
14 money.

15 THE COURT: Right. But don't you -- as the
16 advertiser, aren't you able to control that when you hire
17 one of these ad services to --

18 THE WITNESS: Yes. In a software tool like a DSP,
19 we can. In ad network, we -- that control is typically not
20 available.

21 THE COURT: So who decides -- how is it decided
22 how many times it will be shown?

23 THE WITNESS: My understanding is that the
24 software behind the ad network will maximize profit for the
25 ad network and hopefully also deliver results to the

1 advertiser by showing it the right amount of times, but we
2 don't totally know.

3 THE COURT: So it's the computer that's figuring
4 it out?

5 THE WITNESS: Yeah. Yes.

6 THE COURT: Okay. Thank you.

7 BY MS. CLEMONS:

8 Q And just a quick clarifying question.

9 When we're talking about frequency capping, is
10 that about, you know, the frequency that an ad is shown
11 across a whole campaign or a particular user? Or what
12 exactly is being capped in terms of the frequency?

13 A So it is by user, but different advertisers want it at
14 different rates. Some will say no more than three per day
15 per user. But even if the campaign is 30 days, 90 times is
16 okay. Some may say I don't want it more than 15 times in a
17 month, so it depends on the numerator/denominator.

18 Q And so is frequency capping different from the total
19 number of impressions, or is it something else?

20 MS. GOODMAN: Objection. Leading.

21 THE COURT: I'm going to permit it. Overruled.

22 THE WITNESS: Okay. Sorry. Can you repeat the
23 question?

24 BY MS. CLEMONS:

25 Q Yeah. Could you just explain a bit more about

1 frequency capping and whether -- and whether or how it's
2 related to a total number of impressions an advertiser may
3 want to buy?

4 A Yeah. I think to give an example, if an advertiser
5 says I don't want more than 15 impressions for any single
6 user and the ad campaign is going to be 1 million
7 impressions, dividing 1 million by 15 essentially shows how
8 many users are, you know, the minimum.

9 Q And if your client were unhappy if your DSP or quality
10 went down, would you view an advertiser ad network as an
11 alternative option for purchasing display advertising?

12 A We would not.

13 Q Why not?

14 A Using the premise that we're professionals and we're
15 good at what we do, if we're not able to extract performance
16 using the most sophisticated tool, we typically, in our
17 minds, will not regress to a less sophisticated tool in
18 order to -- as the next option of trying to achieve a
19 marketer's goals.

20 Q Okay. Thank you. I'd like to switch topics a little
21 bit.

22 You mentioned earlier that you prefer to buy
23 programmatically. Can you explain why you -- Goodway
24 prefers to buy display advertising programmatically?

25 A Yeah. There are -- I don't know exactly how many, but

1 a million or more websites. And so calling each one of
2 those websites and asking what their rates are and how we
3 could place ads would be extraordinarily cumbersome and
4 frankly impossible. And so the value of programmatic -- one
5 of the values of programmatic is that it is able to
6 aggregate a large and disparate supply of websites and apps
7 into one place.

8 Q And so does Goodway buy display advertising directly on
9 behalf of clients?

10 A Yeah. Directly with publishers?

11 Q Yes.

12 A Yes. There are times, yes, that we do.

13 Q And does Goodway -- have you heard of the term
14 programmatic guaranteed?

15 A Yes, I have.

16 Q Could you explain what your understanding is of
17 programmatic guaranteed?

18 A It's essentially calling up a website and buying it
19 directly, but then running it through a programmatic tool or
20 a DSP. Yes.

21 Q And do you view direct deals or programmatic guaranteed
22 as substitutes for buying programmatically?

23 A Yeah. I mean -- no.

24 Q Why not?

25 A If the goal is to reach a certain user base within the

1 parameters of the content we believe is acceptable to
2 advertise in, there might be 1,000 websites that meet those
3 quality parameters or standards, and a marketer might be
4 completely okay having their ad placed on 11 of those 1,000
5 websites. And so for us -- and so the efficiency that we
6 can say we're willing to pay this amount of money within
7 this list of websites under these conditions is simply it's
8 possible with programmatic. That is simply impossible due
9 to the cost of labor and human energy that has to be
10 expended if we had to call 1,000 websites or email, et
11 cetera.

12 Q And what amount of labor or human involvement are you
13 referring to for direct deals?

14 A Yeah. So for a direct deal, we have to contact the
15 publisher, we have to negotiate a rate, and then typically,
16 unless it's programmatic guaranteed, we have to essentially
17 send the -- we have to send the advertising code back and
18 forth and quality check it. Whereas with programmatic,
19 that's done in one place, and then it can be federated out
20 to as many publishers as needed.

21 Q And who is doing the -- sending out to the publishers?

22 A Our media buyers.

23 Q And are there human beings involved in communicating
24 with the publishers during the programmatic transactions?

25 A Typically not.

1 Q And in programmatic guaranteed, are there people
2 involved in communicating directly with the publishers?

3 A Typically, yes.

4 Q Does Goodway work with ad exchanges?

5 A Yes. Yes.

6 Q What ad exchanges does Goodway work with?

7 A I don't know that I can generate an exhaustive list,
8 but I can generate primary examples if that's ...

9 Q If you have a top five or whichever ones come to mind.

10 A So I don't know if it's still called AdX, but whatever
11 Google's ad exchange is or was is probably the largest ad
12 exchange. And there's a company called PubMatic, there's a
13 company called Magnite, there's a company called Index
14 Exchange, and there's -- owned by NBC, there's a division of
15 NBCUniversal called FreeWheel which does connected TV.
16 Those are the main ones. We're pretty selective, because I
17 think there are probably 60 to 70 or more exchanges, but
18 most of them don't provide value.

19 Q And you mentioned FreeWheel.

20 Can Goodway buy open-web display advertising
21 through FreeWheel?

22 A Not to my knowledge.

23 MS. GOODMAN: Foundation.

24 THE COURT: He already answered the question.

25 Overruled.

1 BY MS. CLEMONS:

2 Q So for programmatic display advertising, could you
3 describe how Goodway works with ad exchanges?

4 A Yeah. Ad exchanges are really the -- are an
5 aggregation point for publishers before coming into the DSP
6 generally, not exclusively. Very similar to New York Stock
7 Exchange and NASDAQ before I log into Schwab or E-Trade and
8 buy stocks. But because the exchange space takes a cut of
9 the transaction, we saw, I think as early as 2016, maybe
10 2017, the need to communicate with ad exchanges directly to,
11 A, derive better insights about our buying and about
12 publishers; and then, B, to negotiate better rates. Because
13 essentially the advertiser was -- if they bid \$1 and the
14 exchange was going to take 10 or 20 cents of that dollar, we
15 wanted to negotiate the best value for our clients.

16 Q Okay. Let me ask you a few clarifying questions.

17 So you have been able to -- you mentioned you've
18 been able to negotiate rates with ad exchanges?

19 A Yes.

20 Q And are those rates -- who is -- who are the ad
21 exchanges charging those fees to?

22 A They will say that they're charging them to the
23 publishers. I would absolutely disagree with that.

24 Q So why does Goodway -- why would you disagree with
25 that?

1 A If the advertiser puts \$100,000 into a campaign, the
2 DSP takes its cut, then the exchange takes its cut. If the
3 publishers were paying for it, then the exchange would send
4 an invoice to the publisher, and the publisher would pay the
5 exchange. But the fact that they're taking it out of the
6 bid essentially, along the way, in my mind, makes it such
7 that the advertiser is paying.

8 Q Okay. So the fees that you have been able to negotiate
9 with ad exchanges, are these publisher take rates or
10 something else?

11 A Those would be considered exchange take rates.

12 Q Oh, okay.

13 And have you been able to negotiate lower take
14 rates for Goodway customers?

15 A Yes.

16 Q Have you been able to negotiate those with all of the
17 ad exchanges that you work with?

18 A All but one.

19 Q Which one have you not been able to negotiate with?

20 A AdX. Google's AdX.

21 Q Do you have insight into why you have not been able to
22 negotiate the exchange take rate with AdX?

23 A We were told it wasn't an option.

24 Q And who told you it wasn't an option?

25 MS. GOODMAN: Objection to form. Sorry. Hearsay.

1 THE COURT: I think -- just leave it. You don't
2 need to know who.

3 BY MS. CLEMONS:

4 Q Did you try to negotiate a lower take rate with Google?

5 A Yes.

6 Q With the other ad exchanges that you work with, do you
7 have a sense of whether their take rate is higher or lower
8 than Google's?

9 A We did not prior to the negotiations.

10 Q And do you have a sense now?

11 A Yes.

12 Q What is your sense as to whether the take rates of
13 other ad exchanges are higher or lower or the same as
14 Google's?

15 MS. GOODMAN: Leading.

16 THE COURT: Well, more than that, the word "sense"
17 worries me.

18 I mean, do you know or have a reasonable basis to
19 know what the difference is?

20 THE WITNESS: Yes.

21 THE COURT: All right. Then he can answer the
22 question.

23 THE WITNESS: Yeah. So I know about our
24 contracts, which are bound by confidentiality in terms of
25 the exact rate. And then I'm aware from -- I believe there

1 was a series of blog posts by Google and then also from some
2 of the materials produced as a result of this trial that
3 the --

4 MS. GOODMAN: Hearsay.

5 THE COURT: Well, if they're Google statements,
6 I'm going to let them come in.

7 So do you recall exactly what type of Google
8 statement you've seen about that?

9 THE WITNESS: Yeah. There was a -- it was a blog
10 post or an explanation that basically showed the -- after a
11 long, long time of speculation, they came out and they
12 published and said here's how much this take rate is, here's
13 how much -- on each step of the way. And I remember -- I
14 remember for the first time saying, wow, this is really
15 interesting, and I'm glad I know now.

16 THE COURT: And was it higher or lower than the
17 other exchange?

18 THE WITNESS: It was higher than the negotiated
19 rates we had from the other exchanges.

20 THE COURT: All right. Well, you said negotiated
21 rates, but I would assume before you negotiate, you're
22 quoted a rate and then you try to negotiate it down.

23 THE WITNESS: Yes. And Google's rate was higher
24 than the original quoted rate as well.

25 THE COURT: Okay.

1 BY MS. CLEMONS:

2 Q Have you observed differences in quality or features
3 among ad exchanges?

4 A I wouldn't -- yes. Yes.

5 Q Earlier you mentioned that you were selective about the
6 ad exchanges that you worked with; is that right?

7 A Yes.

8 Q Why are you selective about the ad exchanges that you
9 work with?

10 A Well, two reasons. I would say dominantly Number 1
11 would be -- Number 1 would be the quality of the inventory
12 that's available through that exchange. Number 2 would be
13 the price or take rate we're able to secure with that
14 exchange.

15 Q Do any of the exchanges that you work with have unique
16 or particularly valuable features that the other exchanges
17 don't have?

18 A Let me clarify and add onto my last statement.

19 The third would be insights and analytics. And so
20 there are exchanges that will provide insights to us as a
21 buyer of how to more often win auctions that we wanted to
22 win but didn't.

23 Q Have you observed any meaningful differences in the
24 quality of AdX versus the other exchanges that you work
25 with?

1 A Well, so by my three criteria, price being one, yes;
2 the quality of inventory, I think not a meaningful -- I
3 would say there are a set of large ad exchanges, which I
4 named, that provided similar quality inventory to -- whether
5 it's AdX or any of the other ones. There are a series of
6 smaller exchanges, which I think are very poor quality
7 inventory, but we don't work with those. And then in terms
8 of the analytics and insights, I don't believe we've ever
9 gotten that from AdX, whereas we have gotten it from
10 everybody else we work with.

11 Q And do you observe any differences between the ad
12 exchanges with respect to things like fraud and brand
13 safety?

14 A Among the tier that I mentioned, I don't think there's
15 a huge difference in fraud and brand safety. I think that
16 they are all buyer beware.

17 Q So do you have any understanding or explanation for why
18 Google's take rate is higher than the other exchanges that
19 you work with?

20 A I have not been given a reason directly.

21 Q So are you able to stop using a particular exchange?

22 MS. GOODMAN: Leading.

23 THE COURT: I don't think that's leading.

24 Overruled.

25 THE WITNESS: So it depends -- it would depend on

1 the exchange.

2 BY MS. CLEMONS:

3 Q Are you --

4 THE COURT: Can you explain that answer? Why does
5 it depend on the exchange?

6 THE WITNESS: Yeah. Because AdX is so large and
7 has so much inventory that we did the research into looking
8 at whether or not we could turn it off due to its high
9 price, and we -- and our media buyers ask that we not do
10 that because it would limit the amount of supply that was
11 available to them, too much such that they were concerned
12 they couldn't hit the advertisers' goals in terms of total
13 campaign delivery, as well as performance.

14 THE COURT: I thought I may have misunderstood
15 you.

16 I thought you said that several of the other
17 exchanges had inventory that was similar to Google's. Was
18 that in quality or quantity?

19 THE WITNESS: Quality, not quantity.

20 THE COURT: Got it. Okay. Thank you.

21 BY MS. CLEMONS:

22 Q And if any of the other exchanges that you worked with
23 were to start charging take rates comparable to Google's,
24 what would you do?

25 A And there was no way out of it?

1 Q If they started charging that price, what would you --
2 what would you do?

3 A Well, first of all, I would invite all of them, not at
4 the same time, but to meet, and make it clear that the
5 person -- or the exchange that was willing to bend on that
6 would get more money. And in my experience, I've never had
7 someone not bend to get more money.

8 If you're asking if literally they all said that's
9 the end of that and we're all going to charge, I do still
10 think in some limited cases the quality of the insights
11 would prevail. But I think then it would be a more I guess
12 fixed market. If they were all charging the same, then I
13 guess it would be more of a fixed market and the quality
14 difference wouldn't be less meaningful.

15 Q And -- if just one of them.

16 A Oh. If just one of them. I'm sorry. I thought you
17 meant all of them.

18 Oh, if one of them -- no. Then I would shift
19 money away from them to other exchanges that we had better
20 negotiated rates with.

21 Q And why haven't you just done that with Google?

22 A So we have reduced the amount of spend that we put
23 through AdX, but there's a certain threshold below which our
24 buyers believe that it negatively impacts the ability to
25 find the right audience.

1 Q And are there any other exchanges -- ad exchanges that
2 you work with that are in that same category where you
3 simply could not turn them off?

4 A No.

5 Q Let's talk a little bit more about display advertising.

6 Have you heard the term open-web display
7 advertising?

8 A Yeah, of course.

9 Q And had you heard that term before this case?

10 A Of course.

11 Q And why do you say of course?

12 A I don't know. It's been around for 10 plus --
13 15 years. I don't know. It's just -- that's a very common
14 term in the industry, I feel.

15 Q And why -- why do you, in the industry, break open-web
16 display advertising into its own bucket relative to other
17 types of advertising?

18 A Because there are multiple ways to buy it, multiple
19 tools that can be used and multiple exchanges that can be
20 used to buy it. And so it's generally seen as more
21 competitive and more of an Open Auction type environment.

22 Q And is there a difference between display advertising
23 and social media advertising?

24 A Yes.

25 Q Can you please describe for the Court some of the

1 differences that you see representing advertisers between
2 display and social media?

3 A Yeah. I mean, to an advertiser, display advertising is
4 a banner that's going to appear on any one of a million
5 sites potentially. Whereas with social media, if I want to
6 place an ad on Pinterest, I'm going to place an ad on
7 Pinterest, and that's the end of that. If I'm going to
8 place it on Facebook, I'm going to place it on Facebook.
9 It's typically a one-to-one placement.

10 The other thing is, it's entirely expected by an
11 advertiser that the quality of content within social media
12 is highly variant. In other words, user -- the average
13 person can go and kind of say whatever they want on social
14 media and brands understand the risk associated with putting
15 an ad next to that. Whereas a professional media buyer who
16 does their job and narrows the list of websites down to an
17 acceptable list will then say -- will have more confidence
18 that there's less likelihood of appearing next to unsavory
19 content.

20 Q And you mentioned one of the reasons that you think of
21 open-web display advertising in a separate bucket is it's
22 more open and competitive.

23 Can you describe a little bit more about what you
24 mean by competitive? More competitive than what?

25 A Yes. So if I want to -- I think the contrast would be

1 helpful. If I want to buy Facebook, there's really only one
2 place I can go buy Facebook, or even if there are other
3 tools that enable the buying of Facebook, it all ends up
4 going right into Facebook.

5 If I want to buy -- if I want to buy on an open
6 website like an ESPN or a Washington Post or whatever it may
7 be, then I can not only choose the tool that I use -- the
8 DSP that I use, but I could also potentially choose the
9 supply path or the exchange.

10 Q And can you use Google tools to buy ads on Facebook?

11 A Not to my knowledge.

12 Q Can you use Google tools to buy ads on TikTok?

13 A Not to my knowledge.

14 Q Can you use Google tools to buy ads on other walled
15 garden social media networks?

16 A Not to my knowledge.

17 Q Are there differences in the audiences of social media
18 versus open web?

19 A I'm sure technically there are. I think where the
20 difference becomes more pronounced or obvious is when the
21 site list is narrowed down on the open web. And so I think,
22 for example, if we decided to only advertise with the top 20
23 news outlets in the country, as a method of open-web
24 advertising, that's bound to have a different audience than
25 a social media platform that specifies or caters to one type

1 of audience or another.

2 Q Can you buy static images in squares on Facebook's
3 website?

4 A Yeah.

5 Q Would you consider that to be display advertising?

6 A No.

7 Q Why is that not display advertising even though it's
8 static images and squares on Facebook's website?

9 A The best way I would describe that is, a Ritz-Carlton
10 and a Ramada Inn are both on squares of land, but they're
11 clearly in different parts of town, generally. And so --

12 THE COURT: And they'll have different clientele.

13 THE WITNESS: Correct.

14 THE COURT: Yeah.

15 THE WITNESS: And so just as much as a square of
16 land is not equal, a square of space on the web I don't
17 think is equal either.

18 BY MS. CLEMONS:

19 Q And so when you were working with clients to budget for
20 purchases of squares on Facebook's website, is that part of
21 the display budget or the social media budget?

22 A Social media budget.

23 Q And do you consider social media to be a substitute for
24 display advertising on the open web?

25 A I mean, in terms of substitute, do you mean if you took

1 a client's media plan and just ripped out display and put in
2 social and vice versa, that that would be acceptable?

3 Q Would you do that?

4 A No.

5 Q Why not?

6 A Because they have -- well, A, there's different content
7 and different expectations of what a user will encounter.
8 They also -- they perform differently, they deliver
9 different metrics, and I think, yeah, there are different
10 controls that are available, especially with open web, not
11 to mention display, but open-web display, different controls
12 that are available compared to most social media marketing.

13 Q And so if the price of open-web display advertising
14 went up by 5 or 10 percent, would Goodway recommend that
15 advertisers shift spend to social media?

16 MS. GOODMAN: Improper hypothetical.

17 THE COURT: No. Overruled.

18 THE WITNESS: So, Number 1, we have metrics that
19 we have to deliver against, and whether that's brand
20 awareness improvement or that's literally buying things
21 online improvement, and so we stick pretty -- we're very
22 careful about making sure that the performance of the
23 channel is meeting its goals. So, in general, one channel
24 versus another are not within 5 percent. Maybe within
25 10 percent.

1 Even if -- even if the performance of one was
2 significantly greater, it's unusual that we would completely
3 opt out of one of those channels because it serves a
4 function in the media plan as another leg of a stool, for
5 lack of a better analogy, in helping the user see that ad in
6 a different environment.

7 And, again, we've done so much research around the
8 fact that advertising in multiple channels and not
9 consolidating has a beneficial impact on the likelihood of a
10 user to buy a product.

11 BY MS. CLEMONS:

12 Q And when you're advising clients on how to allocate
13 their media budgets, are you comparing features of social
14 media and display directly?

15 A Typically not.

16 Q And are you comparing prices between social media and
17 display?

18 A Pricing will, I think, have -- might have an impact,
19 but, again, it's really a strategic decision if we want to
20 use social or if we want to use search or if we want to use
21 display or video or connected TV or whatever it may be.
22 Each channel tends to serve a role, and that role is, of
23 course, highly variant depending on the advertiser.

24 Q Was there a point in the last ten years when you saw
25 any major changes in the market for open-web display

1 advertising?

2 A Yeah. I've seen -- ten years. Yeah, I think there
3 have been a number of changes. What was it, 2014 to now.
4 Yeah. I've seen how brand safety has become more prevalent,
5 how ad fraud has become more recognized and needed to --
6 needed to be combated. Of course some exchanges have become
7 bigger and some smaller and some DSPs have become bigger and
8 some smaller. And then, yeah, I guess I don't know what it
9 was, six, seven, eight years ago, there was a lot of pricing
10 fluctuation due to just changes in how the market worked.

11 Q Okay. I will ask you about that in just a moment, but
12 I want to follow up quickly.

13 You mentioned the ad fraud and brand safety have
14 become more important.

15 A They were recognized and then dealt with.

16 Q How does Goodway typically address ad fraud and brand
17 safety issues on behalf of clients?

18 A So we -- some of our clients require us -- require us
19 to use some of the largest companies in the space and to use
20 their software to detect those things. What we have found
21 is that looking through the raw log files that those
22 companies miss a lot of ad fraud and also don't catch all of
23 the brand safety challenges. And so we tend to get pretty
24 deep into looking at the log files to determine for
25 ourselves whether or not we think that the ad was served to

1 a human and in a brand-safe environment.

2 Q And what are some of the big companies that you
3 mentioned in the ad fraud and brand-safety space?

4 A I think -- if I think about -- you know, the two
5 largest and public companies are DoubleVerify and Integral
6 Ad Science, or IAS.

7 Q And when you think about ad fraud and brand safety, are
8 you aware of any Google products that are in that space?

9 A I know they acquired some companies. I believe they
10 acquired a company called Adometry, but I don't know exactly
11 what Adometry's tech was doing at the time or evolved to.
12 But Google has told us that they do protect for brand safety
13 and for fraud.

14 THE COURT: All right. It's now 1:00, we're going
15 to break for lunch. We'll be back in session at 2.

16 Mr. Friedman, we're going to give you a witness
17 badge so you can get a little bit faster through the crowds,
18 and make sure you give it to our court security officer
19 before you leave the courtroom at the end of your testimony.

20 THE WITNESS: Thank you, Your Honor.

21 (Court recessed for lunch at 1:01 p.m.)

22 I certify that the foregoing is a true and accurate
23 transcription of my stenographic notes.

24 

25 Stephanie M. Austin, RPR, CRR